TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~294~~ 441

V. P. CORBETT, PLAINTIFF IN ERROR,

vs.

WILLIAM D. NUTT, TRUSTEE, ETC.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED APRIL 17, 1869.



2.

SUPREME COURT OF THE UNITED STATES.

No. 224.

V. P. CORBETT, PLAINTIFF IN ERROR,

vs.

WILLIAM D. NUTT, TRUSTEE, ETC.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

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1 V. P. CORBETT
against
WILLIAM D. NUTT, TRUSTEE.

To the Hon. Salmon P. Case, Chief Justice of the Supreme Court of the United States:

The petition of V. P. Corbett respectfully represents that he is aggrieved by a final judgment of the supreme court of appeals for the State of Virginia, being the highest court in said State in which a decision can be had. A transcript of the record of the judgment complained of is herewith presented, by which it will appear that an action of unlawful detainer was instituted by William D. Nutt, trustee, against V. P. Corbett, to recover possession of a tract of land in the county of Alexandria, Virginia; that one Louisa Hunter, during the late war, died in the county of Alexandria, Virginia, seized of the land in controversy; that Alexandria County was her place of residence before and at the breaking out of the war, and after it began; that she voluntarily abandoned her home, entered the confederate lines, and there remained until her death. It is pretended that the said Louisa Hunter left a will, by which she devised the land in question to the said William D. Nutt, in trust for Emily Featherstonhaugh and Marian Young; and your petitioner further represents that the said land was purchased by him on the 29th day of February, 1864, at a sale for unpaid taxes, under
2 and by virtue of an act of Congress entitled "An act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes," and that under this sale the said Corbett was in possession of the land at the institution of the action. Your petitioner is advised that upon the facts as thus appear by the record, the said Nutt is not entitled to the judgment he has recovered.

And your petitioner further represents that there was drawn in question the construction of the following acts of Congress:

1st. The act of June 7th, 1862, entitled "An act for the collection of direct taxes in the insurrectionary districts within the United States, and for other purposes." (See Laws U. S. 1861–'62, sec. 7, page 422; Brightley's Supp., sec. 56, p. 1342.)

2nd. The act passed July 17, 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes." See Acts of Congress, 1861–'62, page 591, sec. 6, Brightley Dig. Supp., page 1235, sec. 29 and 3rd; act of March 3rd, 1865, Acts 1864–'65, sec. 7, p. 301, all of which acts relate to matters described in the 25th sec. judiciary act; and that the decision of the said supreme court of appeals of Virginia was adverse to the right and title claimed under said acts of Congress by the petition, and that it so appears of record.

3 A transcript of the record and the final judgment of said supreme court of appeals complained of is herewith presented, and for the errors assigned in the petition to the district court of appeals of Virginia, and other errors apparent on the record, he prays that the said judgment may be reversed, and that a writ of error may be awarded to the said supreme court of appeals of Virginia directed, &c.

V. P. CORBETT,
By his counsel, BRENT & WATTLES.

I, George Wm. Brent, an attorney practising in the Supreme Court of

the United States, am respectfully of opinion that there is error in the judgment complained of.

GEORGE WM. BRENT.

4 (Indorsed:) Corbett v. Nutt, trustee. Petition.

Writ of error allowed as prayed.

S. P. CHASE,
Chief Justice U. States.

JUNE 6, 1868.

Writ error iss'd June 8, '68.
Citation " " 8, '68.
Bond same " " "

5 UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the supreme court of appeals for the State of Virginia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of appeals before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit, between V. P. Corbett, plaintiff in error, and William D. Nutt, trustee, &c., defendant in error, wherein was drawn in question the construction of the following acts of Congress of the United States:

1st. The act of June 7, 1862, entitled "An act for the collection of direct taxes in the insurrectionary districts within the United States, and for other purposes."

2nd. The act passed July 17, 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes."

3d. Act of March 3, 1865. Acts 1864-'65, &c.

And that the decision of the said supreme court of appeals of Virginia was adve'se to the right and title claimed under said acts of Congress.

A manifest error hath happened, to the great damage of the said V. P. Corbett, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and

6 openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the 8th day of June, in the year of our Lord one thousand eight hundred and sixty eight.

[SEAL.]

W. H. BARRY,
Clerk of the Circuit Court of the United States
For the District of Virginia.

7 (Indorsed:) Supreme Court of the United States. V. P. Corbett, pl'ff in error, vs. William D. Nutt, trustee, &c., def't in error. Writ of error to the supreme court of appeals of the State of Virginia. Brent & Wattles, att'y pl'ff error.

8 UNITED STATES OF AMERICA, *to wit:*

To William D. Nutt, trustee, &c., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the court-room in the [in the] city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the [of] supreme court of appeals of the State of Virginia, wherein V. P. Corbett is plaintiff and William D. Nutt, trustee, &c., defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 8th day of June, in the year of our Lord one thousand eight hundred and sixty-eight.

S. P. CHASE,
Chief Justice of the Supreme Court of the United States.

9 UNITED STATES OF AMERICA,
District of Virginia, to wit:

, being duly sworn, on oath, deposeth and saith, that on the day of , A. D. 186 , he duly served on William D. Nutt, defendant in error, the within writ, (or citation,) by reading the same to, and leaving a true copy thereof with, him.

Sworn and subscribed to before me this day of , A. D. 186 .

(Indorsed:) No.—. United States Supreme Court. V. P. Corbett, pl'ff in error, vs. William D. Nutt, def't in error. Citation.

Make aff'd't service of within on def't Nutt, and file in clerk's office of supreme court of appeals.

Service acknowledged June 10, 1868.

S. FERGUSON BEACH,
Att'y for Wm. D. Nutt.

Filed 10th June, 1868.

M. T. STARKE,
Clerk Supreme Court of Appeals of Va.

10 Supreme court of appeals State of Virginia.

V. P. CORBETT, PL'FF IN ERROR,
vs.
WILLIAM D. NUTT, TRUSTEE, D'F'T IN ERROR.

Know all men by these presents that we, V. P. Corbett, George Wm. Brent, William N. McVeigh, are held and firmly bound unto William D. Nutt, trustee, in the sum of two hundred and fifty dollars, to be paid to the said William D. Nutt, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, execu-

tors, and administrators, firmly by these presents, sealed with our seals, and dated this 8th day of June, A. D. 1868.

Whereas the above-named V. P. Corbett hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the [the] judgment rendered in the above-entitled suit by the supreme court of appeals of the State of Virginia; now, therefore, the condition of this obligation is such, that if the above-named V. P. Corbett shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be
11 void; otherwise the same shall be and remain in full force and virtue.

V. B. CORBETT, [SEAL.]
GEORGE WM. BRENT, *his Att'y.* [SEAL.]
GEORGE WM. BRENT. [SEAL.]
W. N. McVEIGH. [SEAL.]

Sealed and delivered in presence of—
W. H. BAREY, *Clerk U. S. Cir. C't Distr. Va.*

Endorsed: I certify the surities on the within bond are good and sufficient.
June 8th, '68.

W. H. BARRY,
Clerk U. S. Cir. Distr't Va.

I approve the surety on the within bond and approve the am't.
S. P. CHASE, *Chief Justice.*

12 District court of appeals of Virginia, district IV.

CORBETT
v.
NUTT, TRUSTEE.

To the honorable judges of the district court of appeals for the fourth judicial district of the State of Virginia:

The petition of V. P. Corbett respectfully represents that he is aggrieved by a final judgment of the circuit court for Alexandria, rendered at its May term, in an action of unlawful detainer, wherein William D. Nutt was plaintiff, and the petitioner defendant. A transcript of the record of the judgment complained of is herewith presented, by which it will appear that Louisa Hunter died in April, 1863, in the county of Albemarle, seized of the tract of land in controversy; that Alexandria County was her place of residence before and at the breaking out of the late civil war, and after it begun, she voluntarily abandoned her home and entered in the confederate lines, and there remained until her death; the plaintiff then proved by Jos. H. Bradley that some years ago he prepared a will for Mrs. Hunter, and subsequently a codicil; he proved by himself that prior to testatrix's death she handed to him a paper purporting to be her last will; that he made a copy thereof; that it was in the handwriting of Jos. H. Bradley; that after the death of Mrs. Hunter, he presented it, in November, 1864, to the circuit court in Richmond, for probat, and that it was duly admitted; that the paper so probated was the original of his copy, which on the trial he identified. It was further proved that the clerk of the circuit court was called on by plaintiff to search for the will and the record, and

his reply was that the will was destroyed by the fire in Richmond on its occupation; the plaintiff then offered as evidence the contents of said original paper by the copy, (page 11, Record, see copy,) promising to follow it up with proof of the loss; also of the record of probate, but by the same mode of proof.

The defendant objected to the said testimony, and moved to exclude it, but the court overruled the objection and admitted it, and the defendant excepted.

13 It was further proved that about the breaking out of the civil war Wm. D. Nutt, the plaintiff, held an office under the government of the United States, which he resigned in February, 1861, and in September, 1861, went into the confederate lines, and accepted and held office under the confederate government, which he retained at the time of Mrs. Hunter's death.

It would seem from the testimony that in November, 1864, some person obtained what purported to be a transcript of the record of the alleged probate in the circuit court for Richmond City, duly authenticated by the clerk and judge thereof; and it further appears that some person unknown offered on the 20th day of June, 1865, said authenticated copy of the will for probate in the orphan's court for the county of Washington, District of Columbia, and the same "was admitted to probate and record as a legally authenticated copy of the will of Louisa Hunter, deceased."

By this alleged will of Mrs. Hunter, the premises in controversy were devised to the plaintiff in trust for Emily Featherstonaugh and Marian Young, two married ladies.

At the term of the county court for Alexandria, Marian Young propounded for record an authenticated copy of the record of probat in Washington City. The certificate of the register of wills, among other things, says: "I certify that the aforegoing is a true copy of the original copy of the will of Louisa Hunter," &c. (Page 27, Record.)

He then offered to read the record of the county court in evidence, to which the plaintiff objected, and the objection was overruled, and the defendant excepted.

The plaintiff here rested. The defendant then proved that the premises were duly sold on the 29th day of February, 1864, by the United States tax commissioners for unpaid tnxes due the United States, and read in evidence the certificate given to him. He also read to the jury the record of certain proceedings in the supreme court for the District of Columbia, wherein Emily Featherstonaugh and Marian Young were complainants, and the plaintiffs, Wm. D. Nutt, defendant. The object of this suit was to appoint a trustee in the place of Nutt, who appeared, filed a sworn answer, in which he says that "he has declined to accept the trusts reposed in him; and by a decree of said court one J. D. McPherson was appointed trustee." (Page 37, Rec.)

The defendant rested, and the plaintiff offered to read a certificate of redemption for the premises in controversy awarded to John D. McPherson by the United States tax commissioners, dated the 10th of February, 1866. (Rec., p. 58.)

To which the defendant objected; but the court overruled the objection, and allowed the certificate to be read, and the defendant excepted. This being all the testimony, the defendant moved the court to grant four instructions:

1. If the jury shall believe from the evidence that Wm. D. Nutt, the plaintiff, who sues as trustee, held a position under the govern-

14 ment of the United States, and resigned said office, went volun-

tarily within the lines of the Confederate States, and accepted office under the confederate government, and held said office at the time of the death of the testatrix, and that the said Louisa Hunter was a resident of the county of Alexandria at the time of the breaking out of the civil war, and after its breaking out went voluntarily into the confederate lines, and resided therein up to the time of her death, and that the premises in the summons described were at all times in the military lines and under the jurisdiction of the United States, then that said devise to the plaintiff was inoperative to pass or transfer any title to him, and he cannot therefore recover in this action.

2. If the jury shall believe from the evidence that Wm. D. Nutt was removed from his office as trustee by a decree of the supreme court of the district of Columbia in the suit of Featherstonaugh and others against the said Nutt, and that on motion of the complainants, Jno. D. McPherson was substituted in his stead, then the plaintiff has no right to recover in this action.

3. That on the foregoing facts established in this cause, the plaintiff has no right to recover in this form of action.

4. That to enable the plaintiff to recover in this action, he must show that the certificate of redemption was forwarded to the Secretary of the Treasury, and the defendant repaid his purchase-money by draft drawn on the treasury of the United States; which instructions the court refused, and the defendant excepted.

The jury found for the plaintiff, and the defendant moved to set aside the verdict and asked a new trial, which was refused, and the defendant again excepted.

The petitioner assigns the following errors:

1. The plaintiff below had not laid a sufficient ground for the introduction of secondary evidence which he introduced.

How is the loss of the original will and record of probate sought to be proved? Not by the clerk of the court, the custodian of both, but by the testimony of a stranger, who says that the clerk informed him that he sought for the will, and that it and the record were both destroyed in the late fire in Richmond. This is simply hearsay. Pollard, the clerk of the circuit court, was the proper witness to prove this. Why withhold him and offer hearsay? This is the more significant, when it appears that a paper purporting to be a duly authenticated record of the probate of the original will in the circuit court for the city of Richmond was, on the 20th of June, 1865, offered by some person unknown for probat in the orphan's court in the District of Columbia. This was after the war. The original will and probat had then been destroyed over two months. Why part with the only conclusive evidence of the original will and probat under such circumstances?

The rule of law is, that the best evidence must be given of which the nature of the thing is capable; that is, no evidence shall be received which presupposes greater evidence behind in the party's possession or power. The withholding of that better evidence raises a presumption, that if produced, it might not operate in favor of the party who is called upon for it. For this reason, a party who is in possession of an original paper is not permitted to give a copy in evidence, or to prove its contents. (Taylor v. Niggs, 1 Peters, 591.)

The certificate of a clerk, stating the loss of the record, is not evidence; it must be proved by oath. (Wilcox v. Ray, 1, Hayward 410; Robinson v. Clifford, 2 Wash. C. C., 1.)

In the case of Ben, &c., v. Pete, (2 Rand., 539,) a copy of a deed was allowed to be read in evidence, but not until it was proved by the clerk

of the county court that he had examined his office for the original deed, and had not been able to find it; and also required the defendant to make affidavit that he had make diligent search in all other places where it could possibly be found, but had not been able to find it.

The rule is thus laid down in 1 Starkie on Evi., 389–390: "But in general it must be shown that inquiry has been made after the deed, and the loss of it must be proved by the person in whose hands it was at the time of the loss, or to whose custody it is traced, if that person be living, and if he be dead, application should be made to his representatives, and search should be made amongst the documents of the deceased."

2. The record of probate having been lost, as well as the will, it should have been proved in the mode pointed out by the act of the 21st February, 1866, for the re-establishment of lost records. (Sess. Acts 1865–'66, p. 175.)

It is true that in Smith, &c., v. Carter, 3 Rand., 165, decided by three judges, the provision of the code of 1819 was held to be merely cumulative.

There is a material distinction between the code of 1819 and the present act. In the code of 1819, the governor was authorized, in his discretion, to appoint one or more commissioners to take proof. If appointed, all their proceedings were ex parte; and in Newcomb v. Drummond, (4 Leigh., 60,) the court referred to the fact that there was no proof that a board of commissioners had ever been appointed and had acted.

Under the act of 1866 the proceedings are inter partes. They must be on petition before a master in chancery, setting forth the paper or its contents, which the party expects to prove. The commissioner shall give due notice of the time and place for proceeding, and all parties in interest are to be noticed. The act carefully protects the interests of all. The report of the master must be regularly returned, as chancery reports usually are, and subject to exceptions; and the court is authorized to make such orders as it may deem proper. The object of the act was to make this method of proof exclusive and not cumulative.

3. The record of the copy of a copy by the county court at its Feb'y term, 6th day of Feb'y, 1866, was inadmissible as evidence.

16 The county court had no jurisdiction to admit it to probate, it appearing that the original will had already been probated by the circuit court for the city of Richmond, a court of competent jurisdiction.

The code also allowing wills executed within a foreign jurisdiction, and there probated, and then duly authenticated, to be probated here, applies only to such wills and not to domestic wills. It applies only to an authenticated copy of the original probate, and not to a copy of a copy. (Code, chap. 123, sec. 26, p. 576.) Schultz v. Schultz, 10 Gratt., 358, is not in conflict with this view.

4. The court erred in allowing the certificate of redemption in favor of Jno. D. McPherson to be read in evidence; McPherson was a stranger not only to the land, but also to this suit. So far as he was concerned, his redemption was an utter nullity. Nutt, the plaintiff, is also a stranger to the redemption, and can claim no advantage from it. The act of Congress of the 7th of June, 1862, entitled "An act for the collection of direct taxes in the insurrectionary districts within the United States, and for other purposes," (see Laws of Congress, 1861–'62, sec. 7, page 422; Brightly's Supp., sec. 56, p. 1342,) declares, "That if the owner of said lots of land shall be a minor, a non-resident, alien, or loyal citizen beyond seas, a person of unsound mind, or under legal disability, the guardian, trustee, or other person having charge of the person or estate

of such person may redeem," &c. This language excludes all persons from redeeming except the trustee having charge.

Blackwell on Tax Titles, as to who can redeem. Chap. 27, 490, ed. 1855. On page 496 the author says: "The party who redeems acts at his peril. If it turns out that he had no interest whatever to be protected by the redemption, his act of redemption can neither vest title in him, or divest that of the tax purchaser." "But if it turns out that he had no such ownership as to authorize redemption, his act is a harmless one."

5. The court erred in refusing to grant the four instructions prayed for by the defendant.

1. The object of this instruction was to raise the question as to the effect and true meaning of the 6th section of the act of Congress passed the 17th of July, 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes. (Acts of Congress, 1861–'62, p. 591, sec. 6; Brightly's Dig. Supp., p. 1235, sec. 29.)

This section declares that if any person being engaged in armed rebellion against the United States, or aiding or abetting such rebellion, shall not, within sixty days after public warning and proclamation duly made by the President, cease to aid, countenance, and abet such rebellion, and return to his allegiance, all the estate of such person shall be subject to seizure; and it then directs, "And all sales, transfers, or conveyances of any such property, after the expiration of the said sixty days from the date of such warning and proclamation, shall be null and
17 void; and it shall be a sufficient bar to any suit brought by such person for the possession or the use of such property, or any of it, to allege and prove that he is one of the persons described in this act."

The 7th section directs what proceedings shall be had to secure a condemnation of such estates. The sections are independent.

The 6th might be constitutional, whilst the 7th might be clearly otherwise.

That Congress has the power to confiscate no one can deny.

It would seem, therefore, to follow, that in order to enforce such power, the incidental power to arrest and annul all sales would be constitutional.

The power to annul such sales may be traced to another grant: to the power to make war, to suppress insurrections, &c.

The property in controversy was always, from first to last, in the permanent military occupation of the United States government, which proved to be not only the de facto, but the de jure government controlling it.

Now, the principle that war makes all the citizens of one of the belligerents enemies of the government and of all the citizens of the other, applies equally to civil and to international wars. Either belligerent may modify or limit its operations as to person or territory of the other.

The prize cases, 2 Black, 666; Mrs. Alexander's case, 2 Wall., 404; the Venice, 2 Wall., 258, 274; Vattel, 425, 426.

War gives the sovereign full right to take the persons and confiscate the property of the enemy wherever found; the mitigation of the rigid rule, which the policy of modern nations has introduced into practice, although it may affect its exercise, cannot impair the right itself; and when the sovereign authority shall choose to bring it into operation, the judicial department must give effect to its will. (United States v. Brown, 8 Cr., 110.)

The language of the 6th section will embrace a devise. It is, "all sales, transfers, and conveyances."

A devise is a conveyance. (Seaburn's ex'or v. Seaburn, and 15 Grattan, 423.)

Under the authorities above cited and the evidence, we are warranted in concluding that the devisor and devisee were both aiding or abetting the rebellion, and that therefore the will was inoperative to pass any estate to the devisee.

2. The record of the proceedings in the supreme court of the District of Columbia show conclusively that Wm. D. Nutt never accepted the trusts of the will. He had therefore no right to maintain this action. It is true the district court had no right technically to remove him from his trust over the Virginia land. But his sworn answer filed in the cause shows that he never accepted the trust, but disclaimed it.

It was once held that a disclaimer should be a matter of record. But the doctrine of modern times is, that disclaimer by matter of record
18 is unnecessary, (Townson v. Tichell, 3 B. and Ald., 31;) for as Ld. Tenterden observed, there can be disclaimer by a person in a court of record, unless some other person think fit to cite him there to receive his disclaimer, and if the estate be damnosa hereditas, that is not likely to happen. Justice Holreyed laid it down that even a deed might be dispensed with, and a party might disclaim a freehold by parol; and this doctrine has been sanctioned by a decision of Sir A. Hart, and by the apparent approbation of other judges. Bingham v. Clanmonis, 2 Moll, 253; 12 Eng. Chan., (S. C.,) 438; Skipwith v. Cunningham, 8 Leigh., 271, 281; Bryan v. Hyre, 1 Rob. R., 94, seems to disapprove the rule in Townson vs. Tichell.

3. An unlawful detainer was not the appropriate remedy. The title was alone involved.

4. Even if the redemption had been properly allowed, and the plaintiff were the trustee, yet he has no right to recover the possession in the stage of the matter under the act of Congress of March 3d, 1865. Acts 1864–'65, sec. 7, p. 301, gives the redeeming party a right to the possession when the action of the tax board shall have been approved by the Secretary of the Treasury, and the tax purchaser shall have been repaid his purchase-money by a treasury draft. The section 7 declares, when "the Secretary, on being satisfied that the lands have been duly redeemed, shall repay, by a draft drawn on the treasury of the United States, the said purchaser the principal and interest of the said purchase-money, and the purchaser shall forthwith deliver possession to the owner so redeeming as aforesaid."

Your petitioner therefore prays a supersedeas to the judgment complained of.

V. P. CORBETT,
By his counsel, GEORGE WM. BRENT.
CHARLES W. WATTLES.

I, George Wm. Brent, an attorney practicing in the district court of appeals, am respectfully of opinion that there is error in the judgment complained of.

GEORGE WM. BRENT.

19 VIRGINIA:

Pleas before the judge of the circuit court of Alexandria County, at the court-house of said county, on the 31st day of May, 1867.

Title.

Be it remembered that heretofore, to wit, on the 26th day of September, 1866, came William D. Nutt, trustee, by counsel, and sued out of the clerk's office of the said circuit court a summons against V. P. Corlett, of a plea of unlawful detainer, which writ, with the return thereon made, is in the words and figures following, to wit:

Summons.

The Commonwealth of Virginia to the sheriff of Alexandria County, greeting:

You are hereby commanded to summon V. P. Corbeth to appear before our circuit court of Alexandria, at the court-house of said county, on the 12th day of November next, that day being the first day of the November term, 1866, of said court, to answer William D. Nutt, trustee, of a plea that he is in possession of, and unlawfully withholds from the plaintiff, a tract of land of sixty acres in Alexandria County, on the Columbia turnpike, a part thereof beginning at a stake on the turnpike near the end of a post and rail fence, corner to lot No. 1 on said plat, and running with the line of lot No. 1 with $\frac{1}{4}°$ variation in compass, N. $7\frac{3}{4}°$ W. 131 poles to a planted stone, corner of lot No. 1 in B. W. Hunter's line; then with his line $73\frac{1}{4}°$ west 37 poles 1 link, to another stone, corner to lot No. 4 on said plat, also in Hunter's line; thence, with the lines of lots No. 4 and No. 3, S. $7\frac{3}{4}°$ E. 131 to the turnpike; thence, with the edge of the turnpike, N. $73\frac{1}{4}°$ E. 37 poles and one link, to the beginning; and the residue thereof, beginning at a stake on the turnpike, corner to No. 2, and running with No. 2 north seven and three-quarter degrees west (N. $7\frac{3}{4}°$ W.) ninety-seven poles nine feet to a stake in the line of No. 2 corner to No. 4, with No. 4 south seventy-three and one-quarter degrees west (S. $73\frac{1}{4}°$ W.) fifty-six poles to the county road; down the said road, south fifty-four and a quarter degrees east (S. $54\frac{1}{4}°$ E.) four poles, eighteen links, nine feet, to a cedar; south twenty-five and three-quarter degrees east (S. $25\frac{3}{4}°$ E.) twenty-one poles; south thirteen and three-quarter degrees east (S. $13\frac{3}{4}°$ E.) eighteen poles; south fifty-six poles to the turnpike; then up the edge of the turnpike, north seventy-three and one-quarter degrees east (S. $73\frac{1}{4}°$ E.) fifty-three and a half poles to the beginning; and have then there this writ.

20 Witness Jefferson Tacey, clerk of our said court, at the court-house aforesaid, this 26th day of September, 1866, and in the 91st year of the Commonwealth.

JEFF'N TACEY.

[Internal rev. stamp, 50c.]

Executed by service of copy upon V. P. Corbett, September 28th, 1866.

S. N. GARWOOD, *Sheriff*,
By J. A. STAUTENBURGH, *D. S.*

And at another day, to wit, at a circuit court continued and held for said county of Alexandria, on the 20th day of November, 1866:

This day comes the defendant, by his attorney, and files a petition in writing for the removal of this cause to the circuit court of the United States, to be holden in the State of Virginia; which petition is in the words and figures following, to wit:

Petition to remove to U. S. circuit court for Virginia.

In the circuit court for Alexandria County, State of Virginia.

WM. D. NUTT
v.
V. P. CORBETT.

To the Hon. Henry W. Thomas, judge of the circuit court for Alexandria County:

The petition of V. P. Corbett respectfully represents that the object of the above-entitled suit is to recover of and from the petitioner a certain tract of land situate in the county of Alexandria and State of Virginia, now in his possession, and which was purchased by him on the 29th day of February, A. D. 1864, at a sale of lands for unpaid taxes under and by virtue of an act of Congress entitled "An act for the collection of district taxes in insurrectionary districts within the United States, and for other purposes." The certificate of said sale is herewith filed as a part of this petition.

The petitioner is advised that he is entitled to the benefit of section 5 of the act of Congress of the United States approved March 3rd, 1863, entitled "An act relating to habeas corpus, and regulating judicial proceedings in certain cases," which provides that — any has been or shall be commenced against any person, for any arrest or imprisonment made, or other trespasses or wrongs done or committed, or any act omitted to be done, by virtue or under color of any authority derived from, or exercised by or under the President of the U. S., or any act of Congress, the defendant may, on petition, have suit removed for trial to the circuit court of the United States.

21 Your petitioner prays that he may — allowed the benefit of the said section, and the above cause may be removed for trial to the next term of the circuit court of the United States to be holden in the State of Virginia.

Respectfully submitted,

V. P. CORBETT.

BRENT & WATTLES, *for Petitioner.*

STATE OF VIRGINIA, *Alexandria County, ss:*

This day V. P. Corbett, whose name is signed to the foregoing petition, [this day,] personally appeared before the undersigned, Jefferson Tacey, clerk of the circuit court of Alexandria, and made oath that the matters and things contained therein are true.

Given under my hand this 20th day of November, 1866.

JEFFERSON TACEY, *Clk.*

Certificate of sale referred to in foregoing petition.

[No. 294.]

United States of America.—Tax sale certificate No. 92.

This is to certify that at a sale of lands for unpaid taxes under and by virtue of an act entitled "An act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes," held, pursuant to notice, at Alexandria, in the county of Alexandria, in the State of Virginia, on the 29th day of February, A. D. 1864,

the tract of land hereinafter described, situate in the county of Alexandria and State aforesaid, and described as follows, to wit, sixty acres on Columbia road, northwest of court-house seven miles, said to have belonged to Mrs. L. W. Hunter, and charged to her on the land book of the State aforesaid for the year 1860, and valued on said book at three thousand six hundred dollars, was sold and struck off to V. P. Corbett for the sum of fifteen hundred and sixty dollars and — cents, he being the highest bidder, and that being the highest sum bidden for the same; the receipt of which said sum in full is hereby acknowledged and confessed.

Given under our hands, at Alexandria, this 29th day of February, A. D. 1864.

JOHN HAWXHURST,
GILLET F. WATSON,
A. LAWRENCE FOSTER,
Commissioners

STATE OF VIRGINIA,
Alexandria County Court Clerk's Office, July 25th, 1866.

22 The foregoing certificate of sale was received in the office and admitted to record.

Teste: JEFFERSON TACEY, *Clerk.*

Recorded Liber "X," No. 3, folio 328, and examined.

Teste: J. TACEY, *Clerk.*

And at another day, to wit, at a circuit court continued and held for said county of Alexandria, on the 23d day of November, 1866:

Motion to remove to U. S. circuit court overruled.

This day came the parties, by their attorneys, and the defendant's motion for the removal of this case to the circuit court of the United — for the State of Virginia, being argued, the same is overruled.

And at another day, to wit, at a circuit court continued and held for said county of Alexandria, on the 23d day of May, 1867:

Not guilty, replication, and issue.

This day came the parties, by their attorneys, and the defendant pleaded not guilty, and thereof put himself upon the country, and the plaintiff does the like; therefore came a jury, to wit:

Jury.

John F. Baggott, Harrison Kirk, W. H. Faulkner, W. E. Atwell, James Hammersly, George Sullivan, John Naylor, William Goodrich, Wm. P. Baxter. W. T. Herrick, G. E. Price, and Wm. Jenkins, who being elected, tried, and sworn to try, whether the defendant is in possession of, and unlawfully withholds from the plaintiff, the premises in controversy, and having heard the evidence, were adjourned till to-morrow morning at ten o'clock.

And at another day, to wit, at a circuit court continued and held for said county of Alexandria, on the 24th day of May, 1867:

This day came the parties, by their attorneys, and the jury to try the issue in this cause appeared in court pursuant to adjournment, and were sent out of the court, and after a time they returned into court, and upon their oath returned a verdict in these words:

Verdict.

"We of the jury find the issue joined for the plaintiff, and that
23 the defendant doth unlawfully withhold from the plaintiff the possession of the premises in the summons mentioned, and that he has not so unlawfully withheld the same for three years before the date of the summons."

Motion to set aside and grant new trial.

Whereupon the defendant moved the court to set aside the verdict and grant him a new trial therein, which motion being argued, and the court not being advised of its judgment to be given therein, time is taken to consider thereof.

MEM.—On the trial of this cause the defendant excepted to certain rulings of the court given against him.

And now at this day, to wit, at a circuit court continued and held for said county of Alexandria, on the day and year first herein mentioned, to wit, on the 31st day of May, 1867:

Motion to set aside verdict and for new trial overruled.

This day came the parties, by their attorneys, and thereupon the defendant's motion to set aside the verdict and grant him a new trial in this cause being argued, the same is overruled, to which ruling of the court, and to an opinion of the court given against him on the trial of this cause, the defendant excepted and tendered his two bills of exceptions, which were received, signed, sealed, and enrolled, and ordered to be made a part of the record in this cause. Therefore, it is considered by the court that the plaintiff recover against the defendant the possession of the premises in the summons mentioned, and his costs by him about his suit in this behalf expended; and on motion of the said plaintiff, a writ of possession is awarded him, to the sheriff directed, to cause him to have his possession of the said premises, and on motion of the said defendant, the execution of this judgment is stayed for sixty days, upon his entering into bond in the penalty of $200, conditioned as the law requires. The exceptions in this cause are in the words and figures following, to wit:

1st bill of exceptions.

NUTT
vs.
CORBETT.

Be it remembered that on the trial of this cause it was admitted and agreed, that Louisa Hunter died on the day of April, 1863, seized in

fee and possession of the land in the summons described; and the plaintiff, to maintain the issue on his part, read to the jury the deposition of Joseph H. Bradley, as follows:

24 *Deposition of Jos. H. Bradley.*

I, Charles Walker, a justice of the peace in and for the county of Washington, in the District of Columbia, do certify that on the 2nd day of November, 1866, at the office of Mr. Joseph H. Bradley, in the city of Washington, between the hours of sunrise and sunset, and about 3 o'clock p. m., I attended for the purpose of taking testimony, pursuant to the notice and commission hereto attached, and no witnesses being then produced, the taking of said testimony was thereupon adjourned until Wednesday, the 7th November, 1866, at the same—and between the same hours. And on Wednesday, the 7th day of November, 1866, at said office, between sunrise and sunset, I proceeded to take the testimony of Joseph H. Bradley, pursuant of said commission and notice, to be read for the plaintiff on the trial of the cause therein mentioned.

Joseph H. Bradley of lawful age, being duly sworn, deposeth and saith as follows, that is to say:

I knew Louisa Hunter at her lifetime for many years. Some time in the year 1852 or 1853, at her request and under her direction, I wrote the draft of a will for her, by which she disposed of all her estate, real and personal. That will, having been carefully read over by her, was executed by her in my office, in presence of Mr. Philip R. Fendall, Edward B. Steele, and myself, who, at her request and in her presence, signed the same as witnesses in presence of each other. By that will she appointed William D. Nutt, of the State of Virginia, executor and trustee of her whole estate, I believe. Subsequently, and about four years after the execution of this will, Mrs. Hunter, either by reason of having purchased in the intermediate time two pieces of property in Alexandria County, Virginia, one of which was purchased from a man named Corbit, or because having previously purchased the property, she had failed to dispose of them specifically in that will, and having reference to certain personal property, she executed a codicil, which was prepared by me, and executed by her in my office, in the presence of David Saunders, Benjamin Young, and myself, and we, at her request, in her presence, and in the presence of each other, signed the same as witnesses thereto.

My recollection is, that the papers were connected together and left for some time in my possession, and that Mrs. Hunter herself came for them and took took them away, sealed up in an envolope, as they had been deposited with me by her, since which time I have not seen them. By this codicil she either again nominated Wm. D. Nutt as executor and trustee, or recognized him as such, as nominated in her will. These are the only testamentary papers executed by Mrs. Hunter which I ever prepared or witnessed.

JOS. H. BRADLEY.

25 And the said testimony having been taking, subscribed, and sworn to at the time and place specified in the caption hereto, I now certify the same to the circuit court of Alexandria County, Virginia.

In testimony whereof I hereunto set my hand and seal in said county of Washington, District of Columbia, this 7th day of November, 1866.

CHARLES WALKER, [SEAL.]
Justice of the Peace.

[Rev. stamp, 5 cent.]

He further proved that he knew Mrs. Louisa Hunter during her lifetime; that she died at Charlottesville, in Virginia; that some years prior to the war she delivered to him a paper purporting to be her last will and testament and codicil thereto; that he himself made a copy of said paper; that the original paper was in the handwriting of Joseph H. Bradley; and that said copy was in the following words and figures:

Will of Louisa Hunter.

In the name of God. Amen.

I, Louisa Hunter, of the city of Washington and District of Columbia, being of sound and disposing mind, memory and understanding, and being desirous to make a final settlement of my worldly affairs, do make and publish this my last will and testament, hereby revoking, annulling and making void all and every other will, codicil, or testamentary writing which I have heretofore made, and declaring this to be, and contain this my last will.

In the first place, I desire that my body shall be suitably and properly buried, and such memorial placed over my grave as my executor hereinafter named shall in his discretion deem most fitting.

In the next place, I devise and bequeath to my friend Wm. D. Nutt, his heirs, executors, administrators and assigns, according to the nature and quality of the respective species of property I may leave, and of my estate therein, all the real and personal and mixed estate, wheresoever the same may be situated, and whether my estate or interest therein be legal or equitable, of which I may die seized and possessed or which belong to me, or to which I may now or may be at my decease in any manner entitled, to be held, disposed of and managed by him, upon the trust and for the purposes following, and for no other use, interest or purpose whatsoever, that is to say: To hold the house in which I now reside, purchased by myself from Charles H. Lane, situated on square numbered four hundred and ninety-one, and fronting on C street north, in the city of Washington, together with all the ground conveyed to me in said square by said Charles H. Lane, for the sole and separate use and benefit of my adopted daughter Marian, and the wife of Clement Young so that neither the same, nor the rents, issues and profits thereof, shall be subject to the control of her said husband, or of any future husband she may have, nor be [nor be] made liable for the debts of the same; and so that the same, or the rents, issues or profits thereof, shall not be charged, or in any manner burthened or encumbered [page 13] by way of anticipation, or in any other way. But that the said Marian shall and may during her natural life, either occupy the same or at her option rent or demise the said premises, and receive the rents and issues and profits thereof to her own sole and separate use, she keeping the said premises in repair and insured against loss or damage by fire, and paying all public dues and assessments thereon; and in default of her making all

needful repairs, keeping the buildings on said premises insured as aforesaid, and paying all public dues, taxes and assessments, then the said trustee may receive the said rents, and after paying for necessary repairs as aforesaid, insurance, taxes, public dues and assessments out of the same, he shall pay over the residue to the said Marian to her sole and separate use as aforesaid, or the said trustee may in his discretion collect the interest, dividend and income of the personal estate hereinafter set aside for said Marian, and thereout pay said repairs, insurance, public dues, taxes and assessments, and the residue pay over to said Marian.

In the next place, I direct that my said trustee shall out of my personal estate take so much as, being added to any personalty the said Marian may have at my death, will make the sum of ten thousand dollars, which said sum so taken from my general personal estate, he shall invest in his own name, as trustee for said Marian under my will, in such stocks, bonds, mortgages, and other income producing personalty as he may deem best, and
27 he shall hold the same for the sole and separate use of said Marian, with the like limitations and restrictions as are hereinbefore declared and imposed upon the real estate hereinbefore devised for her use; and I also direct that he shall receive, take and hold upon the like trusts as are hereinbefore declared of and concerning the said last mentioned real estate, all the household and kitchen furniture which I may leave at my decease (excepting therefrom my plate).

In the next place, I direct that he shall divide my plate into two parts, as nearly equal as may be, one part of which he shall hold for the use of said Marian, on like and the same trusts as hereinbefore declared of and concerning my said furniture.

I direct that the said trusts shall continue during the lifetime of said Marian, and if she shall at her death leave a child or children, or descendants in the second generation living, born in lawful wedlock, then I direct further that the said trustee shall convey the said real estate and distribute the said personalty to and among such child, children and descendants, according to the statutes of descents and distribution which may then be in force in the District of Columbia, taking the said Marian as the common ancestor of such child, children and descendants: but if the said Marian shall die without leaving any child, children or descendants in the second generation living at her death, born in lawful wedlock, then I direct that my said trustee shall hold the said property, real and personal, for the use and benefit of, and convey and distribute the same to and among my neice Emily Featherstonhaugh and her children, and descendants, in like manner and upon the like trusts as are hereinafter declared of and concerning the part or portion of my said estate hereinafter set apart and given to her and them.

Item second. I direct that my said trustee shall hold

the house which I received from Samuel S. Williams and the land and improvements thereon in said square, numbered four hundred and ninety-one, in the city of Washington, fronting on C street north, and adjoining the premises hereinbefore set apart for said Marian, for the sole and separate use and benefit of my niece Emily Featherstonhaugh, so that neither the rents, issues nor
28 profits thereof, nor the said premises, shall be subject to the control or liable for the debts of her present husband or any future husband she may have; and so that the said premises, nor the rents, issues or profits thereof, shall not be charged or in any manner burthened or encumbered by way of anticipation or in any other way; but that the said Emily may for and during her natural life occupy the same, or at her pleasure rent and demise the said premises, and receive the rents, issues and profits thereof to her own sole and separate use, she keeping the said premises in repair, and insured against loss or damage by fire, and paying all public dues, taxes and assessments thereon, and in default of her making all needful repairs, keeping the buildings thereon insured as aforesaid, and paying all public dues, taxes and assessments on said premises, then the said trustee may receive the said rents, and after paying thereout for all needful repairs, insurance as aforesaid, and taxes, public dues and assessments thereon, he shall pay over the residue thereof to the said Emily; or the said trustee may in his discretion collect the interest, dividends and income of the personal estate hereinafter set aside for the said Emily, and thereout pay the said repairs, insurance, taxes, public dues and assessments, and the residue pay over to the said Emily for her sole and separate use.

In the next place, I direct that my said trustee shall, out of my general personal estate, invest the sum of ten thousand dollars, in his own name, as trustee for said Emily under my will, in such stocks, bonds, mortgages, or other income producing personalty as he may deem best, and he shall hold the same for the sole and separate use of the said Emily, with the like limitations and restrictions as are hereinbefore declared and imposed upon the real estate hereinbefore devised for her use; and I also direct that he shall take and hold the half part of my plate (divided as I have hereinbefore directed), to the sole and separate use of said Emily, and upon the like trusts hereinbefore last mentioned.

I direct that the said trusts for the benefit of the said Emily shall continue during her natural life, and if at her death she shall leave living a child or children, or descendants in second generation, born in lawful wedlock, then I further direct, that on the death of the said
29 Emily, the said trustee shall convey the said real estate and distribute the said personal estate hereinbefore set apart for said Emily, to and among such child, children and descendants so living, according to the statutes of descent and distribution which may then be in force in the District of Columbia, taking the said Emily as the

common ancestor of such child, children and descendants; but if the said Emily shall die without leaving living at her death any child, children or descendants in the second generation, born in lawful wedlock, then I direct that my said trustee shall hold the said property, real and personal, for the use and benefit of said Marian Young, if living, upon the like trusts as are hereinbefore declared of and concerning the property hereinbefore set aside for her use, and if the said Marian be dead leaving living at her death a child, children or descendants in the second generation, then to convey and distribute the same as is hereinbefore provided for the conveyance and distribution of the part so set aside for said Marian.

Item third. In the next place, I direct that my said trustee shall give my gold watch to the eldest son of my niece Emily Featherstonaugh, living at my death, and if he shall die leaving his mother surviving him, I desire it may be given to her.

Item fourth. In the next place, I desire that my said trustee shall, at his discretion, hold my real estate in square numbered four hundred and eighty-nine in the city of Washington, or sell the same and invest the proceeds of such sale in such bonds, stocks or mortgages as to him may seem best, the clear income from said last-mentioned real estate, and from the bonds, stocks and mortgages, if the same shall be sold and invested as aforesaid, to be paid to my brother Sidney F. Chapman for and during his natural life; and upon his death (if not sold before) shall sell the said real estate, and (if previously sold and invested, then) the proceeds of said sale in either case shall be disposed of as follows: he shall give to my niece Virginia Neale, wife of Christopher Neale, of Alexandria, in token of my regard for her, the sum of one thousand dollars; the residue thereof I direct shall be divided by my said trustee into two equal parts, each part to be invested by him—one upon the same trusts as hereinbefore declared of and concerning the portion of my said estate given to the use of my said adopted daughter Marian, and to be distributed at her death; the other upon the same trusts as are hereinbefore declared of and concerning that portion of my said estate given to the use of my said niece Emily, and to be distributed as aforesaid at her death.

In the fifth place. Item. I direct that my said trustee shall hire out and manage all the slaves I may leave at my death, and receive their hire for two years thereafter, and pay the net amount thereof to my said adopted daughter Marian; and at the expiration of that term, I further direct that all my said slaves and their increase shall be by my said trustee manumitted in the city of Washington, and in the event of his failing to do so, I do hereby manumit all my slaves and all their increase at the expiration of two years from the day of my decease.

And sixth item. I hereby give power to my said trustee from time to time, as he shall see fit, to sell, transfer, collect, modify and change the investments I have heretofore and hereinafter directed, and to reinvest the same from time to time for my said adopted daughter and my said neice Emily, and hold the same respectively on the trusts hereinbefore declared of and concerning the same.

Item seventh. As to all the rest, residue and remainder of my said estate real and personal, I direct that the same shall be divided by my said trustee into two equal parts——one part of such remainder to be held by him and divided and distributed on the same trusts as hereinbefore declared of the portion set off to the use of the said Marian, and the other part on the same trusts as are declared hereinbefore of and concerning the portion set off to Emily, and to be distributed as that is directed to be distributed.

Finally. I appoint my friend William D. Nutt, executor of this my last will. I direct that as trustee he shall not be held chargeable or
31 accountable for any losses that do not result from gross negligence; and that he shall retain for his trouble and responsibility such commissions as have been fixed as just and reasonable by the circuit court of the District of Columbia, in the cases of William Foxall's estate, and of the estate of Edward De Krafft, and that he do not be required to give any security for the due execution of his said trusts, unless upon a bill filed and proof of his gross negligence therein.

In testimony of all which I have hereto set my hand and seal this sixth day of August eighteen hundred and fifty-two, in the presence of (eighteen hundred and fifty-two.

who I have requested to attest the same.

LOUISA HUNTER, [SEAL.]

At the request of Louisa Hunter, we have signed this paper writing as witnesses. The word "the" having been first erazed from, and the word "degree" erazed, and the word "generation" interlined in the 152nd line; and the words "the sum of one thousand dollars" having been interlined in the 193d line. And we certify that the said Louisa Hunter signed the said paper so interlined in our presence, and declared the same, written on two sheets of paper, to contain and to be her last will and testament, and we, at her request, in her presence, and in the presence of each other, have affixed our names hereto as witnesses.

P. R. FENDALL,
EDW. B. STELLE,
JOS. H. BRADLEY.

This first codicil, I, Louisa Hunter, being of sound and disposing mind, memory and understanding, do make to my last will and testament:

In the first place, I hereby republish my last will and testament heretofore made by me, written on two sheets of paper, in two hundred and fifty-five lines, bearing date the sixth day of August, eighteen hundred and fifty-two, and attested by P. R. Fendall, Ed. B. Stelle and Jos. H. Bradley, with the following changes and provisions, that is to say:

In my said will, and being the fifth item thereof, I have made certain provisions for and in respect to my slaves. I hereby revoke the said fifth item of my said will, from the 204th to the 215th lines thereof, both included; and in lieu of the bequests and
32 provisions therein, I do hereby devise freedom to each and every of my said slaves, and manumit and set them, and each and every of them, free at my death, and I direct my said trustee to execute all such papers and deeds, and do every act which may be necessary fully to effect this devise, and for that purpose, if necessary, to bring my said slaves into the District of Columbia.

Item. Since the execution of my said will, I have purchased two parcels of land lying adjacent to each other in the county of Alexandria and State of Virginia, on one of which I now reside, and which I purchased from Jenks; this parcel of land I direct my said trustee to hold for the use and benefit of my said adopted daughter Marian Young, upon the same trusts as are hereinbefore in my said last will contained and set out of and concerning the property in the city of Washington, which I purchased from the said Charles H. Lane, and to hold and dispose of the same after the death of the said Marian, in like manner as is in and by my said last will provided and directed as to the said last mentioned property.

And as to the other of said parcels of land, being the one I purchased from Corbit, and on which the said Marian Young now resides, I direct that my said trustee shall hold the same in like manner for the use and benefit of my said neice Emily during her life, and dispose of the same at her death, upon the like trusts and in like manner as is in and by my said last will directed and provided as to the property which I received from S. S. Williams; but with this further additional power and authority, that is to say: If the said Emily Featherstonhaugh shall desire the same, and unite with the said trustee in a deed for the conveyance thereof, I hereby give my said trustee full power and authority to sell and convey the same, to receive the proceeds of such sale, and to invest and hold the said proceeds upon like trusts with like power as is in and by the said will given to him, in respect to the personality thereby given to him to be held for the use and benefit of said Emily, and at her death to be divided and distributed in like manner.

Item. And for the purpose of enabling my said trustee to execute the trusts in the last preceding item contained, I hereby devise to him and his heirs the said two pieces of land therein mentioned.

In testimony of all which I have hereto set my hand and seal this fourth day of December, eighteen hundred and fifty-six.

LOUISA HUNTER. [SEAL.]

We, the subscribers, being thereto requested by Mrs. Louisa Hunter, hereto set our names as witnesses, in the presence of said Louisa, and of each other, she having first signed the same in our presence, and declared this paper writing to be the first codicil to her last will and
33 testament, and that she hereby republishes the said last will and testament.

JOS. H. BRADLEY,
D. SAUNDERS,
BENJAMIN YOUNG.

VIRGINIA,

In the Circuit Court of the City of Richmond, November 1st, 1864:

This writing, purporting to be the last will and testament of Louisa Hunter, deceased, together with the codicil accompanying the same, was this day produced in open court for probat, and it appearing to the court that the attesting witnesses to the said will and to the said codicil are within the lines of the enemy, so that the attendance of the requisite number of such witnesses cannot be enforced by summons, A. Austin Smith, H. St. George Offutt, and R. W. Young were sworn, and the said A. Austin Smith deposed, that he is well acquainted with the handwriting of P. R. Fendall, one of the attesting witnesses to the said will, and with the handwriting of Jos. H. Bradley, another of the attesting witnesses to the said will and one of the attesting witnesses to the said codicil, and that he verily believed the name of the said P. R. Fendall, subscribed as a witness to the said will, and the name of the said Jos. H. Bradley, subscribed as a witness to the said will, and to the said codicil, to have been severally written by themselves.

The said H. St. George Offutt deposed that he is well acquainted with the handwriting of the said P. R. Fendall and Jos. H. Bradley, and also with the handwriting of D. Saunders, another of the attesting witnesses to the said codicil, and that he verily believed the names of the said P. R. Fendall and Jos. H. Bradley, subscribed to the said will as witnesses and the name of the said D. Saunders and of the said Jos. H. Bradley subscribed as witnesses to the said codicil, to have been severally written by themselves; and the said R. W. Young deposed that he is well acquainted with the handwriting of the said P. R. Fendall, and that he verily believed that the name of said P. R. Fendall subscribed as a witness to the said will, to have been written by himself; whereupon the said will and codicil were established as the true last will and testament of the said Louisa Hunter, deceased, and ordered to be recorded as such.

Teste: BENJ. POLLARD, *Clerk.*

STATE OF VIRGINIA, *City of Richmond, to wit:*

I, Benjamin Pollard, clerk of the circuit court of the city of Richmond, in the State aforesaid, do hereby certify, that the foregoin is a true transcript from the records of the said court.

34 In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at Richmond, this third day of November, in the year of our Lord one thousand eight hundred and sixty-four, and in the fifty-ninth year of the Commonwealth.

[SEAL.] BENJ. POLLARD, *Clerk*

STATE OF VIRGINIA, *City of Richmond, to wit:*

I, John A. Meredith, judge of the circuit court of the city of Richmond, in the State of Virginia, do hereby certify that Benjamin Pollard, whose name is signed to the above certificate, is clerk of the said court.

Given under my hand this 3rd day of November, 1864.

JOHN A. MEREDITH.

At a session of the orphans' court, in and for the county of Washington, and District of Columbia, held in Washington City, on Tuesday, June 20th, A. D. 1865, the following, among other proceedings, were had and recorded upon the minutes thereof:

An authenticated copy of the will of Louisa Hunter, deceased, from the clerk of the circuit court of the city of Richmond, in the State of Virginia, was this day filed for probate and record in this court; and it appearing that the said will had been duly admitted to probate and record by a court of competent jurisdiction in the State of Virginia, and the requisite United States revenue stamps having been affixed to the aforesaid authenticated copy of the same, it is thereupon ordered that the said paper be, and the same is hereby, admitted to probate and record as a legally authenticated copy of the will of Louisa Hunter, deceased.

A true copy from the record of proceedings of said court filed in the office of the register of wills.

Witness my hand and the seal of the orphans' court this 28th day of July, A. D. 1865.

[SEAL.] Z. C. ROBBINS, *Reg'r of Wills.*

[Rev. stamp 5c.]

OFFICE OF REGISTER OF WILLS.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

I hereby certify, that the aforegoing is a true copy of the original copy of the will of Louisa Hunter, deceased, and the probate thereto, filed and recorded in the office of register of wills for Washington
35 County aforesaid, and also that the said will, after having been proven by the witnesses whose name—appear in the aforegoing probate, was, by order of the orphans' court for the county aforesaid admitted to probate and record on the 20th day of June, 1865.

Witness my hand and the seal of the orphans' court of Washington County aforesaid this 28th day of July, A. D. 1865.

[SEAL.] Z. C. ROBBINS, *Reg'r of Wills.*

[Rev. stamp. 5c.]

The plaintiff further proved that he deposited the said original paper with the clerk of the circuit court of the city of Richmond in 1864. He also introduced a witness who proved that he had inquired for said paper of the said clerk at his office in the city of Richmond, in whose custody the said original paper had been left; that said clerk, at his request, made search for said paper and reported that said paper had been lost out of his possession, and destroyed at the time of the fire in Richmond in April, 1865. And the said plaintiff then offered to read to the jury as evidence of the contents of said original paper, the said copy hereinbefore inserted. He had previously also proved that he knew the signatures of Mr. Fendall and Mr. Bradley, two of the attesting witnesses to said original paper to be genuine, but did not know the others, and that all of the attesting witnesses were beyond the limits of the State of Virginia.

He further offered to prove by said Nutt that he had had the said paper probated as the last will and codicil of L. H. in the said circuit court for the city of Richmond in November, 1864, and that the same was then duly proved and admitted to record in said court, promising to follow said last offer with proof respecting the loss and destruction of the record of probate, corresponding to the proof already offered respecting the loss and destruction of the said original paper.

To these said offers of evidence the defendant objected. 1st objections. Because no proper legal ground had been laid for the admission

of secondary evidence; because it was inadmissible to establish the record of the probate in this form; because it required the evidence of two witnesses to prove the contents of such will; because, if said will were lost or destroyed, it could only be established in the manner prescribed by the code for proving lost records, or established in a court of chancery.

The court overruled the objection and admitted the evidence, to which ruling of the court the defendant excepted.

The witness, Wm. D. Nutt, further proved that Mrs. Hunter, prior to the breaking out of the late civil war, resided in Alexandria County; that some months after the occupation of Alexandria by the United States forces, she left her home and went to Middleburg,
36 Va., within the confederate lines, and remained within said lines up to the time of her death; that about the breaking out of the said war Wm. D. Nutt held an office under the United States, which he resigned in February, 1861, and in September, 1861, went into the confederate lines and held office under the confederate government, which he retained at the time of Mrs. H.'s death.

The plaintiff then offered to read to the jury the following record of the Alexandria County court, viz:

(See body of will and codicil hereinbefore copied.)

VIRGINIA:

In the Circuit Court of the City of Richmond, November 1st, 1864:

This writing, purporting to be the last will and testament of Louisa Hunter, deceased, together with the codicil accompanying the same, was this day produced in court for probat, and it appearing to the court that the attesting witnesses to the said will and to the said codicil are within the lines of the enemy, so that the attendance of the requisite number of such witnesses cannot be enforced by summons, A. Austin Smith, H. St. George Offutt, and R. W. Young were sworn, and the said A. Austin Smith deposed that he is well acquainted with the handwriting of P. R. Fendall, one of the attesting witnesses to the said will, and with the handwriting of Jos. H. Bradley, another of the attesting witnesses to the said will, and one of the attesting witnesses to the said codicil, and that he verily believed the name of the said P. R. Fendall subscribed as a witness to the said will, and the name of the said Jos. H. Bradley subscribed as a witness to the said will and to the said codicil, to have been severally written by themselves. The said H. St. George Offutt deposed that he is well acquainted with the handwriting of the said P. R. Fendall and Jos. H. Bradley, and also with the handwriting of D. Saunders, another of the attesting witnesses to the said codicil, and that he verily believed the names of the said P. R. Fendall and Jos. H. Bradley subscribed to the said will as witnesses, and the name of said D. Saunders, and of the said Jos. H. Bradley, subscribed as witnesses to the said codicil, to have been severally written by themselves; and the said R. W. Young deposed that he is well acquainted with the handwriting of the said P. R. Fendall, and that he verily believed the name of the said P. R. Fendall, subscribed as a witness to the said will, to have been written by himself; whereupon the said will and codicil were established as the true last will and testament of the said Louisa Hunter, deceased, and ordered to be recorded as such.

Teste: BENJ. POLLARD, *Clerk.*

37 STATE OF VIRGINIA, *City of Richmond, to wit:*

I, Benjamin Pollard, clerk of the circuit court of the city of Rich-

mond, in the State aforesaid, do hereby certify that the foregoin is a true transcript from the records of the said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at Richmond, this third day of November, in the year of our Lord one thousand eight hundred and sixty-four, and in the fifty-ninth year of the Commonwealth.

[SEAL.] BENJA. POLLARD, *Clerk.*

STATE OF VIRGINIA, *City of Richmond, to wit:*

I, John A. Meredith, judge of the circuit court of the city of Richmond, in the State of Virginia, do hereby certify that Benjamin Pollard, whose name is signed to the above certificate, is clerk of the said court.

Given under my hand this 3d day of November, 1864.

JOHN A. MEREDITH.

OFFICE OF REGISTER OF WILLS.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

I hereby certify that the aforegoing is a true copy of the original will of Louisa Hunter, deceased, and the probate thereto, filed and recorded in the office of register of wills for Washington County aforesaid; and also that the said will, after having been proven by the witnesses, whose names appear in the aforegoing probate, was, by order of the orphans' court for the county aforesaid, admitted to probate and record on the 20th day of June, 1866.

Witness my hand and the seal of the [of the] orphans' court of Washington County aforesaid this 4th day of January, A. D. 1866.

[SEAL.] Z. C. ROBBINS,
Register of Wills.

[Rev. stamp, 5 c.]

An authenticated copy of the last will and testament and codicil of Louisa Hunter, deceased, was presented to the court for probate, 6 Feb'y, 1866, by Marian Young, by John D. McPherson, her next friend, and it appearing to the court that said will has been proved before the circuit court of the city of Richmond, by A. Austin Smith, H. St. George
38 Offutt, and R. W. Young, as to the handwriting and signature of P. R. Fendall, Jos. H. Bradley, D. Saunders, as witnesses to the said will and codicil, and admitted to record in said circuit court, said authenticated copy is ordered to be recorded in this court as a will of realty. To the reading of which the defendant objected.

2nd objection. Because the original will had already been probated in the circuit court of the city of Richmond, and a certified copy of said record of probate should be introduced—because the probate of a copy of—will in a court of foreign jurisdiction could not be probated in the county court of Alexandria.

But the court overruled said objections, and allowed said record to be read; to which the defendant excepted.

And the defendant, to maintain the issue on his part, proved that the said premises were duly assessed with taxes due the United States, in accordance with the act of Congress passed June 7th, 1862, entitled, "An act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes;" that they were sold for the non-payment of said taxes; that the defendant was the purchaser, and received the commissioner's certificate of sale, and took possession of the premises in controversy under the title so acquired.

The certificate of sale was in the words and figures following, viz:

[294.]

United States of America.—Tax certificate No. 92.

This is to certify that at a sale of lands for unpaid taxes, under and by virtue of an act entitled "An act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes," held pursuant to notice, at Alexandria, in the county of Alexandria, in the State of Virginia, on the 29th day of February, A. D. 1864, the tract or parcel of land hereinafter described, situate in the county of Alexandria, and State aforesaid, and described as follows, to wit, sixty acres on Columbia road, northwest of court-house seven miles, said to have belonged to Mrs. L. W. Hunter, and charged to her on the land book of the State aforesaid for the year 1860, and valued at three thousand six hundred dollars, was sold and struck off to V. P. Corbitt, for the sum of fifteen hundred dollars and —— cents, he being the highest bidder, and that being the highest sum bidden for the same.

The receipt of which said sum in full is hereby acknowledged and confessed.

Given under our hands, at Alexandria, this 29th day of February, A. D. 1864.

JOHN HAWXHURST,
GILLET F. WATSON,
A. LAWRENCE FOSTER,
Commissioners.

39 STATE OF VIRGINIA,
Alexandria County Court Clerk's Office, July 25, 1866:

The foregoing certificate of sale was received in the office and admitted to record.

Teste: JEFFERSON TACEY, *Clerk.*

Recorded in Liber X, No. 3, folio 328, and examined.

Teste: J. TACEY, *Clerk.*

Record from supreme court D. C.

The defendant further read to the jury the record of a decree in the supreme court of D. C., wherein Emily Featherstonhaugh et al. were complainants, and Wm. D. N. was defendant; which said record is in the words and figures following, to wit:

Bill filed July 17, 1865.

In the supreme court of the District of Columbia.

JAMES D. FEATHERSTONHAUGH AND EMILY Featherstonhaugh, his wife; Clement Young and Marian Young, his wife; Sidney F. Chapman, Virginia C. Neale,
vs.
WILLIAM D. NUTT.
} No. 469, equity.

To the honorable the justices of the supreme court of the District of Columbia, sitting in equity:

The bill of complaint of James D. Featherstonhaugh, Emily Featherstonhaugh, late Chapman, his wife; Clement Young, and Marian Young, his wife; Sidney F. Chapman, and Virginia Neale, widow of Christopher Neale, deceased, complainants, against William D. Nutt, late of Alexandria County, in the State of Virginia, defendant.

Your orators respectfully show to your honors that Mrs. Louisa Hunter, widow of Alexander Hunter, late of the District of Columbia, deceased, died in the county of Albemarle, in the State of Virginia, on or about the 23d day of April, in the year eighteen hundred and sixty-three, having first by her last will and testament, duly executed to pass real estate, and admitted since her death to probate in the orphans' court of the District of Columbia, nominated, constituted, and appointed the said William D. Nutt her sole trustee for certain purposes, and clothed with certain powers, particularly and at large set forth in said will, a duly certified copy of which is herewith filed, marked Exhibit A, No. 1, reference to which, as a part of this bill, is hereby made for greater particularity.

Your orators further show unto your honors, the said testatrix left a large and valuable estate, both real and personal, most of which lies in the District of Columbia, and by the terms of said will it is impossible to obtain a settlement thereof without the intervention of said trustee, or another in his stead, clothed with his powers and charged with his trusts. They further show they are, under said will and the codicil annexed thereto, the only devisees, distributees, and legatees interested in said estate, and are of the full age of twenty-one years, and are informed the said defendant declines to qualify as trustee as aforesaid, or to accept said trusts reposed in him.

Your orators are informed and advised they are remidiless in the premises at law, and can only have relief in equity. To the end, therefore, the said trustee, the defendant, may full, true, and perfect answer make to the matters and things hereinbefore set forth, as fully as if here repeated, and he interrogated thereto, and that a new trustee may be appointed in his place under said will, and such relief granted in the premises as to your honors may appear just, may it please your honors to grant the writ of subpœna, &c.

Your orators will ever pray, &c.

BRADLEY & BRADLEY,
Compl'ts' Sol'rs.

Summons to answer.—Issued July 17, '67.

In the supreme court of the District of Columbia, July 17, 1865.

JAMES D. FEATHERSTONHAUGH ET AL., Complainants, *against* WILLIAM D. NUTT, DEFENDANT. } No. 469, equity.

The President of the United States to William D. Nutt, defendant:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGGS, *Clerk.*

MEMORANDUM.—That the defendant is to enter his appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's return, July 21, 1865:
41 Service acknowledged.

W. Y. FENDALL,
Sol'r for Def't.

Summ'd.

D. S. GOODING, *Marshal.*

JULY 21, 1865.

Defendant's answer.—Filed July 17, '65.

FEATHERSTONHAUGH ET AL.
vs.
WILLIAM D. NUTT, } No. 459, in equity.

To the honorable the justices of the supreme court of the District of Columbia, sitting in equity:

The answer of William D. Nutt, the defendant, impleaded in this cause, to the complainants' bill of complaint.

This defendant, saving, reserving to himself all manner of benefit and advantage, &c., answering, says:

He admits the death of the testatrix at the time alleged, the execution of her will before her death, and that complainants' exhibit is a true copy. This defendant further says, he is the person mentioned in said will as trustee, and has declined to accept the trusts reposed in him; and having fully answered, prays to be hence dismissed with his costs.

WM. D. NUTT.

Before me, the subscriber, a justice of the peace in and for the county of Washington, D. C., personally appeared, this 17th day of July, A. D. 1865, William D. Nutt, the defendant, whose answer is hereto annexed, and being by me duly sworn, says the matters stated therein of his own knowledge are true, and those on information he believes to be true.

CHARLES WALTER, *J. P.* [SEAL.]

Setting cause for hearing by consent.—Filed July 22, '65.

JAMES D. FEATHERSTONHAUGH, EMILY, HIS WIFE, Sidney F. Chapman, et al.,
vs.
WILLIAM D. NUTT. } No. 469, eq. doc. 7.

Set this cause for haring upon bill, answer, and exhibit, by consent of parties.

BRADLEY & BRADLEY,
Compl'ts' Sol'rs.
W. Y. FENDALL, *for Def't.*

42 *Decree substituting Jno. D. McPherson for Wm. D. Nutt, trustee.—Filed July* 22, '67.

FEATHERSTONHAUGH, SIDNEY F. CHAPMAN, ET AL.,
vs.
WM. D. NUTT. } No. 469, eq. doc. 7.

This cause having been set for hearing by consent of counsel, and

the same having been heard and considered upon the bill, answer, and exhibit filed, and it appearing to the satisfaction of the court the complainants ought to have the relief prayed it, is therefore by the court ordered, adjudged, and decreed, this 22d day of July, in the year eighteen hundred — sixty-five, that John D. McPherson, esq., be, and he is hereby, appointed trustee in the name, place, and stead of the defendant, William D. Nutt, clothed with all the powers and charged with all the duties reposed and vested in said Nutt as trustee, by the testatrix mentioned in complainants' bill of complainant, and by her particularly set forth in her last will and testament; and said trustee shall first file his bond in the penal sum of ten thousand dollars, conditioned for the faithful performance of the trusts reposed in him by this court, and obey such other and further order as may by this court be passed in the premises.

By order of the court.

Trustee's bond.—Filed July 22, '65.

Know all men by these presents that I, John D. McPherson, of Prince George's County, Maryland, am held and firmly bound unto the United States of America in the full and just sum of two thousand dollars, lawful money; for the payments of which to the said United States, well and truly to be made, I hereby bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal and dated the twenty-second day of July, eighteen hundred and sixty-five, and passed in a cause in equity, wherein James D. Featherstonhaugh and others were complainants, and William D. Nutt was defendant, the said John D. McPherson was appointed trustee in the name, place, and stead of the said William D. Nutt, and clothed with all the posses, and charged with all the duties reposed and vested in said Nutt as trustee by the testatrix mentioned in the said bill of complaint.

Now, the condition of this obligation is such, that if the bounden John D. McPherson do and shall well and faithfully perform the trust reposed in him by said decree, or that may be reposed in him by said decree, or that may be reposed in him by any future decree or order in the premises, then the above obligation to be void; otherwise to remain in full force, virtue, and effect in law.

JNO. D. McPHERSON. [SEAL.]

Signed, sealed, and delivered in presence of—
R. J. MEIGS, Jr.

43 *Will.*

In the name of God. Amen.
I, Louisa Hunter, of the city of Washington and District of Columbia, being of sound and disposing mind, memory and understanding, and being desirous to make a final settlement of my worldly affairs, do make and publish this my last will and testament, hereby revoking, annulling and making void all and every other will, codicil or testamentary writing which I have heretofore made, and declaring this to be, and contain this my last will.

In the first place, I desire that my body shall be suitably and properly buried, and such memorial placed

over my grave as my executor hereinafter named shall in his discretion deem most fitting.

In the next place, I devise and bequeath to my friend Wm. D. Nutt, his heirs, executors, administrators and assigns, according to the nature and quality of the respective species of property I may leave, and of my estate therein, all the real and personal and mixed estate, wheresoever the same may be situated, and whether my estate or interest therein be legal or equitable, of which I may die seized and possessed, or which belong to me, or to which I may now or may be at my decease in any manner entitled, to be held, disposed of and managed by him, upon the trust and for the purposes following, and for no other use, interest or purpose whatsoever, that is to say: To hold the house in which I now reside, purchased by myself from Chs. H. Lane, situated on square numbered [bered] four hundred and ninety-one, and fronting on C street north, in the city of Washington, together with all the ground conveyed to me in said square by said Charles H. Lane, for the sole and separate use and benefit of my adopted daughter Marian, and the wife of Clement Young so that neither the same, nor the rents, issues and profits thereof, shall be subject to the control of her said husband, or of any future husband she may have, nor be [nor be] made liable for the debts of the same; and so that the same, or the rents, issues or profits thereof, shall not be charged, or in any manner burthened or encumbered by way of anticipation, or in any other way; but that the said Marian shall and may during her natural life, either occupy the same or at her option rent or demise the said premises, and receive the rents and issues and profits thereof to her own sole and separate use, she keeping the said premises in repair and insured against loss or damage by fire, and paying all public dues and assessments thereon; and in default of her making all needful repairs, keeping the buildings on said premises insured as aforesaid, and paying all public dues, taxes and assessments, then the said trustee may receive the said rents, and after paying for necessary repairs as aforesaid, insurance, taxes, public dues and assessments out o the same, he shall pay over the residue to the said Marian to her sole and separate use as aforesaid, or the said trustee may in his discretion collect the interest, dividend and income of the personal estate hereinafter set aside for said Marian, and thereout pay said repairs, insurance, public dues, taxes and assessments, and the residue pay over to said Marian.

44 in original.

In the next place, I direct that my said trustee shall out of my personal estate take so much as, being added to any personalty the said Marian may have at my death, will make the sum of ten thousand dollars, which said sum so taken from my general personal estate, he shall invest in his own name, as trustee for said Marian under my will, in such stock, bonds, mortgages, and other income producing personalty as he may deem best, and he shall hold the same for the sole and separate use

of said Marian, with the like limitations and restrictions [tions] as are hereinbefore declared and imposed upon the real estate hereinbefore devised for her use; and I also direct that he shall receive, take and hold upon the like trusts as are hereinbefore declared of and concerning the said last mentioned real estate, all the household and kitchen furniture which I may leave at my decease (excepting therefrom my plate).

In the next place, I direct that he shall divide my plate into two parts, as nearly equal as may be, one part of which he shall hold for the use of said Marian, on like and the same trusts as hereinbefore declared of and concerning my said furniture.

I direct that the said trusts shall continue during the lifetime of said Marian, and if she shall at her death leave a child or children, or descendants in the second generation living, born in lawful wedlock, then I direct further, that the said trustee shall convey the said real estate and distribute the said personalty to and among such child, children and descendants, according to the statutes of descents and distribution which may then be in force in the District of Columbia, taking the said Marian as the common ancestor of such child, children and descendants: but if the said Marian shall die without leaving any child, children or descendants in the second generation living at her death, born in lawful wedlock, then I direct that my said trustee shall hold the said property, real and personal, for the use and benefit of, and convey and distribute the same to and among my neice Emily Featherstonhaugh and her children, and descendants, in like manner and upon the like trusts as are hereinafter declared of and concerning the part or portion of my said estate hereinafter set apart and given to her and them.

Item second. I direct that my said trustee shall hold the house which I received from Samuel S. Williams and the land and improvements thereon in said square, numbered four hundred and ninety-one, in the city of Washington, fronting on C street north, and adjoining the premises hereinbefore set apart for said Marian, for the sole and separate use and benefit of my niece Emily Featherstonhaugh, so that neither the rents, issues nor profits thereof, nor the said premises, shall be subject to the control or liable for the debts of her present husband or any future husband she may have; and so that the

[In original, correctly, it is 112.]

said premises, nor the rents, issues or profits thereof, shall not be charged or in any manner burthened or encumbered by way of anticipation or in any other way; but that the said Emily may for and during her natural life occupy the same, or at her pleasure rent and demise the said premises, and receive the rents, issues and profits thereof to her own sole and separate use, she keeping the said premises in repair, and insured against loss or damage by fire, and paying all public dues, taxes and assessments thereon, and in default of her making all needful

repairs, keeping the buildings thereon insured as aforesaid, and paying all public dues, taxes and assessments on said premises, then the said trustee may receive the
46 said rents, and after paying thereout for all needful repairs, insurance as aforesaid, and taxes, public dues and assessments thereon, he shall pay over the residue thereof to the said Emily; or the said trustee may in his discretion collect the interest, dividends and income of the personal estate hereinafter set aside for the said Emily, and thereout pay the said repairs, insurance, taxes, public dues and assessments, and the residue pay over to the said Emily for her sole and separate use.

In the next place, I direct that my said trustee shall, out of my general personal estate, invest the sum of ten thousand dollars, in his own name, as trustee for said Emily under my will, in such stocks, bonds, mortgages, or other income producing personalty as he may deem best, and he shall hold the same for the sole and separate use of the said Emily, with the like limitations and restrictions as are hereinbefore declared and imposed upon the real estate hereinbefore devised for her use; and I also direct that he shall take and hold the half part of my plate (divided as I have hereinbefore directed), to the sole and separate use of said Emily, and upon the like trusts hereinbefore last mentioned.

I direct that the said trusts for the benefit of the said Emily shall continue during her natural life, and if at her —— she shall leave living a child or children, or descendants in second generation, born in lawful wedlock, then I further direct, that on the death of the said Emily, the said trustee shall convey the said real estate and distribute the said personal estate hereinbefore set apart for said Emily, to and among such child, children and descendants so living, according to the statutes of descent and distribution which may then be in force in the District of Columbia, taking the said Emily as the common ancestor of such child, children and descendants; but if the said Emily shall die without leaving living at her death any child, children or descendants in the second generation, born in lawful wedlock, then I direct that my said trustee shall hold the said property, real and personal, for the use and benefit of said Marian Young, if living, upon the like trusts as are hereinbefore declared of and concerning the property hereinbefore set aside for her use, and if the said Marian be dead leaving living at her death a child, children or descendants in the second
47 generation, then to convey and distribute the same as is hereinbefore provided for the conveyance and distribution of the part so set aside for said Marian.

Item third. In the next place, I direct that my said trustee shall give my gold watch to the eldest son of my niece Emily Featherstonaugh, living at my death, and if he shall die leaving his mother surviving him, I desire it may be given to her.

Item fourth. In the next place, I desire that my said trustee shall, at his discretion, hold my real estate in

square numbered four hundred and eighty-nine in the city of Washington, or sell the same and invest the proceeds of such sale in such bonds, stocks or mortgages as to him may seem best, the clear income from said last-mentioned real estate, and from the bonds, stocks and mortgages, if the same shall be sold and invested as aforesaid, to be paid to my brother Sidney F. Chapman for and during his natural life; and upon his death (if not sold before) shall sell the said real estate, and (if previously sold and invested, then) the proceeds of said sale in either case shall be disposed — as follows: he shall give to my niece Virginia Neale, wife of Cristopher Neale of Alexandria, in token of my regard for her, the sum of one thousand dollars; the residue thereof I direct shall be divided by my said trustee into two equal parts, each part to be invested by him—one upon the same trusts as hereinbefore declared of and concerning the portion of my said estate given to the use of my said adopted daughter Marian, and to be distributed at her death; the other upon the same trusts as are hereinbefore declared of and concerning that portion of my said estate given to the use of my said niece Emily, and to be distributed as aforesaid at her death.

In the fifth place. Item. I direct that my said trustee shall hire out and manage all the slaves I may leave at my death, and receive their hire for two years thereafter, and pay the net amount thereof to my said adopted daughter Marian; and at the expiration of that term, I further direct, that all my said slaves and their increase shall be by my said trustee manumitted in the city of Washington, and in the event of his failing to do so, I do
48 hereby manumit all my slaves and all their increase at the expiration of two years from the day of my decease.

And sixth item. I hereby give power to my said trustee from time to time, as he shall see fit, to sell, transfer, collect, modify and change the investments I have heretofore and hereinafter directed, and to re-invest the same from time to time for my said adopted daughter and my said neice Emily, and hold the same respectively on the trusts hereinbefore declared of and concerning the same.

Item seventh. As to all the rest, residue and remainder of my said estate real and personal, I direct that the same shall be divided by my said trustee into two equal parts—one part of such remainder to be held by him and divided and distributed on the same trusts as hereinbefore declared of the portion set off to the use of the said Marian, and the other part on the same trusts as are declared hereinbefore of and concerning the portion set off to Emily, and to be distributed as that is directed to be distributed.

Finally. I appoint my friend William D. Nutt, executor of this my last will. I direct that as trustee he shall not be held chargeable or accountable for any losses that do not result from gross negligence; and that he shall retain for his trouble and responsibility such commissions as have been fixed as just and reasonable by the circuit court of the District of Columbia, in the cases of William Foxall's estate, and of the estate of Edward De Krafft, and that he do not be required to give any security for the due execution of his said trusts, unless upon a bill filed and proof of his gross negligence therein.

In testimony of all which I have hereto set my hand and seal this sixth day of August, eighteen hundred and fifty-two, in the presence of (eighteen hundred and fifty-two.

who I have requested to attest the same.

LOUISA HUNTER, [SEAL.]

49 At the request of Louisa Hunter, we have signed this paper writing as witnesses, the word "the" having been first erazed from, and the word "degree" erazed, and the word "generation" interlined in the 152nd line; and the words "the sum of one thousand dollars" having been interlined in the 193d line. And we certify that the said Louisa Hunter signed the said paper so interlined in our presence, and declared the same, written on two sheets of paper, to contain and to be her last will and testament, and we, at her request, in her presence, and in the presence of each other, have affixed our names hereto as witnesses.

P. R. FENDALL,
EDW. B. STELLE,
JOS. H. BRADLEY.

Codicil to will.

This first codicil, I, Louisa Hunter, being of sound and disposing mind, memory and understanding, do make to my last will and testament:

In the first place, I hereby republish my last will and testament heretofore made by me, written on two sheets of paper, in two hundred and fifty-five lines, bearing date the sixth day of August, eighteen hundred and fifty-two, and attested by P. R. Fendall, Ed. B. Stelle and Jos. H. Bradley, with the following changes and provisions, that is to say:

In my said will, and being the fifth item thereof, I have made certain provisions for and in respect to my slaves. I hereby revoke the said fifth item of my said will, from the 204th to the 215th line thereof, both included; and in lieu of the bequests and provisions therein, I do hereby devise freedom to each and every of them, free at my death, and I direct my said trustee to execute all such papers and deeds, and do every act which may be necessary fully to effect this devise, and for that purpose, if necessary, to bring my said slaves into the District of Columbia.

Item. Since the execution of my said will, I have purchased two parcels of land lying adjacent to each other in the county of Alexandria and State of Virginia, on one of which I now reside, and which I pur-

chased from — Jenks; this parcel of land, I direct my said trustee to hold for the use and benefit of my said adopted daughter Marian Young, upon the same trusts as are hereinbefore in my said last will contained and set out of and concerning the property in the city of Washington, which I purchased from the said Charles H. Lane, and to hold and dispose of the same after the death of the said Marian, in like manner as is in and by my said last will provided and directed, as to the said last mentioned property.

And as to the other of said parcels of land, being the one
50 I purchased from Corbit, and on which the said Marian Young now resides, I direct that my said trustee shall hold the same in like manner for the use and benefit of my said neice Emily during her life, and dispose of the same at her death, upon the like trusts and in like manner as is in and by my said last will directed and provided, as to the property which I received from S. S. Williams; but with this further additional power and authority, that is to say: If the said Emily Featherstonaugh shall desire the same, and unite with the said trustee in a deed for the conveyance thereof, I hereby give my said trustee full power and authority to sell and convey the same, to receive the proceeds of such sale, and to invest and hold the said proceeds upon like trusts with like power as is in and by the said will given to him, in respect to the personalty thereby given to him to be held for the use and benefit of said Emily, and at her death to be divided and distributed in like manner.

Item. And for the purpose of enabling my said trustee to execute the trusts in the last preceding item contained, I hereby devise to him and his heirs, the said two pieces of land therein mentioned.

In testimony of all which, I have hereto set my hand and seal, this fourth day of December, eighteen hundred and fifty-six.

LOUISA HUNTER. [SEAL.]

We, the subscribers, being thereto requested by Mrs. Louisa Hunter, hereto set our names as witnesses, in the presence of said Louisa, and of each other, she having first signed the same in our presence, and declared this paper writing to be the first codicil to her last will and testament, and that she hereby republishes the said last will and testament.

JOS. H. BRADLEY,
D. SAUNDERS,
BENJAMIN YOUNG.

Puobate of will.

VIRGINIA,

In the Circuit Court of the City of Richmond, November 1st, 1864:

This writing, purporting to be the last will and testament of Louisa Hunter, deceased, together with the codicil accompanying the same, was this day produced in open court for probate, and it appearing to the court that the attesting witnesses to the said will and to the said codicil are within the lines of the enemy, so that the attendance of the requisite number of such witnesses cannot be enforced by summons, A. Austin Smith, H. St. George Offutt, and R. W. Young were sworn, and the said A. Austin Smith deposed that he is well acquainted with the handwriting of P. R. Fendall, one of the attesting witnesses to the said will, and with the handwriting of Jos. H. Bradley, another of the attest-
51 ing witnesses to the said will, and one of the attesting witnesses to the said codicil, and that he verily believed the name of the

said P. R. Fendall, subscribed as a witness to the said will, and the name of the said Jos. H. Bradley, subscribed as a witness to the said will, and to the said codicil, to have been severally written by themselves. The said H. St. George Offutt deposed that he is well acquainted with the handwriting of the said P. R. Fendall and Jos. H. Bradley, and also with the handwriting of D. Saunders, another of the attesting witnesses to the said codicil, and that he verily believed the names of the said P. R. Fendall and Jos. H. Bradley, subscribed to the said will as witnesses, and the name of the said D. Saunders and of the said Jos. H. Bradley, subscribed as witnesses to the said codicil, to have been severally written by themselves; and the said R. W. Young deposed that he is well acquainted with the handwriting of the said P. R. Fendall, and that he verily believed that the name of said P. R. Fendall, subscribed as a witness to the said will, to have been written by himself; whereupon the said will and codicil were established as the true last will and testament of the said Louisa Hunter, deceased, and ordered to be recorded as such.

Teste: BENJ. POLLARD, *Clerk.*

STATE OF VIRGINIA, *City of Richmond, to wit:*

I, Benjamin Pollard, clerk of the circuit court of the city of Richmond, in the State aforesaid, do hereby certify that the foregoin is a true transcript from the records of the said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at Richmond, this third day of November, in the year of our Lord one thousand eight hundred and sixty-four, and in the fifty-fourth year of the commonwealth.

[SEAL.] BENJ. POLLARD, *Clerk.*

STATE OF VIRGINIA, *City of Richmond, to wit:*

I, John A. Meredith, judge of the circuit court of the city of Richmond, in the State of Virginia, do hereby certify that Benjamin Pollard, whose name is signed to the above certificate, is clerk of the said court.

Given under my hand this 3d day of November, 1864.

JOHN A. MEREDITH.

OFFICE OF REGISTER OF WILLS.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

52 I hereby certify that the aforegoing is a true copy of the original authenticated copy of the will of Louisa Hunter, deceased, and the probate thereto, filed and recorded in the office of register of wills for Washington County aforesaid, and also that the said will, after having been proven by the witnesses whose names appear in the aforegoing probate, was, by order of the orphans' court for the county aforesaid, admitted to probate and record on the twentieth day of June, 1865.

Witness my hand and the seal of the orphans' court of Washington County aforesaid this 22d day of June, A. D. 1865.

[SEAL.] Z. C. ROBBINS, *Reg'r of Wills.*

[Rev. stamp, 5c.]

OFFICE OF REGISTER OF WILLS.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

At a session of the orphans' court in and for the district and county

aforesaid, held in Washington, on the 20th day of June, A. D. 1865, the following, among other proceedings, were had and recorded upon the minutes thereof:

An authenticated copy of the will of Louisa Hunter, deceased, from the clerk of the circuit court of the city of Richmond, in the State of Virginia, was this day filed for probate and record in this court; and it appearing that the said will had been duly admitted to probate and record by a court of competent jurisdiction in the State of Virginia, and the requisite United States revenue stamps having been affixed to the aforesaid authenticated copy of the same, it is thereupon ordered that the said paper be, and the same is hereby, admitted to probate and record as a legally authenticated copy of the will of Louisa Hunter, deceased.

A true copy from the original record of proceedings of the orphans' court, filed in the office of register of wills in and for the county of Washington aforesaid.

Witness my hand and the seal of the orphans' court this 22d day of June, A. D. 1865.

[SEAL.] Z. C. ROBBINS,
[Rev. stamp, 5c.] *Reg'r of Wills.*

DISTRICT OF COLUMBIA, *to wit:*

I, Return J. Meigs, clerk of the supreme court of the said District, hereby certify the foregoing twenty-five pages to be a full tran-
53 script of the proceedings of the cause, as they appear of record in the said court.

Witness my hand and the seal of said court, June 19th, 1867.

[SEAL.] R. J. MEIGS, *Clerk.*

[Revenue stamp, 5c.]

The plaintiff then proved the premises in controversy on which said tax was levied were susceptible of convenient partition, so that the sale of a very small part thereof would have satisfied said tax; and he further offered to read the certificate of redemption, admitted to be genuine, in the words and figures following, to wit:

Certificate of redemption U. S. to McPherson, trustee.

UNITED STATES OF AMERICA, *District of Virginia:*

Redemption certificate No. 31.

Whereas on the 29th day of February, 1864, the following described tract, lot, or parcel of land, situate in the city and county of Alexandria, State of Virginia, and particularly described as follows, to wit:

(No. 294.) Sixty acres on Columbia road, northwest of the court-house (7) seven miles, said to belong to Mrs. L. W. Hunter, and charged to her on the land book of the State aforesaid for the year 1860, and valued on said book at (3,600 dollars) thirty-six hundred dollars, was sold for unpaid taxes charged thereon, under an act entitled "An act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes," to V. P. Corbit, for the sum of fifteen hundred and sixty dollars, which sum was paid into our hands on the 10th day of March, 1864, which purchase-money, and a duplicate certificate of sale, was duly forwarded to the Treasury Department.

This is to certify that John D. McPherson, trustee for Marian Young and Emily Featherstonhaugh, owners of said property, and married women at the time of said sale, and under the same disability, at the present time, having taken an oath to support the Constitution of the United States, and Marian Young and Emily Featherstonhaugh having sworn that they had not taken part with the insurgents in the present (or late) rebellion, or in any way given them aid or comfort, and satisfied us that said oath was true, and said John D. McPherson having paid nine dollars and seventy-two cents tax, four dollars and eight-six cents penalty, eight dollars and cents interest, nine dollars and fifty cents cost of proceeding, and two dollars fees, as required by act afore-
54 said, amounting to the sum of thirty-four dollars and eight cents, the receipt whereof in full is hereby acknowledged and confessed, has redeemed the lot, tract, or parcel of land from forfeiture and sale, and the said lot, tract, or parcel of land is hereby henceforth discharged from all lien, charge, or claim by reason of said tax, penalty, interest, and cost of every kind and nature,

Given under our hands, at Alexandria, this 10th day of February, A. D. 1866.

JOHN HAWXHURST,
GILLET F. WATSON,
Tax Commissioners.

To the reading of which the defendant objected, because the said redemption in favor of McPherson was illegal, and did not sustain the plaintiff's claim. But the court overruled said objection, allowed the certificate to be read, and the defendant excepted. And this being all the evidence, the defendant prayed the court to instruct the jury as follows:

Defendant's instructions.

1st. If the jury shall believe from the evidence that Wm. D. Nutt, the plaintiff, who sues as trustee, held a position under the government of the United States, and resigned said office, went voluntary within the lines of the Confederate States, and accepted office under the confederate government, and held said office at the time of the death of the testatrix, and that the said Louisa Hunter was a resident of the county of Alexandria at the time of the breaking out of the civil war, and after its breaking out went voluntarily into the confederate lines and resided therein up to the time of her death, and that the premises in the summons described were at all times in the military lines and under the jurisdiction of the United States, then that said devise to the plaintiff was inoperative to pass or transfer any title to him, and he cannot therefore recover in this action.

2. If the jury shall believe from the evidence that Wm. D. Nutt was removed from his office as trustee by a decree of the supreme court of the District of Columbia in the suit of Featherstonaugh and others against the said Nutt; and that on motion of the said complainants, John D. McPherson was substituted in his stead, then the plaintiff has no right to recover in this action.

3. That all the foregoing facts established in this cause the plaintiff has no right to recover in this form of action.

4. That to enable the plaintiff to recover in this action, he must show that the certificate of redemption was forwarded to the Secretary of the Treasury, and the defendant repaid his purchase-money by draft drawn on the treasury of the United States.

But the court refused to grant the said instructions, to which refusal as well as to each and all of the said rulings against him the
55 defendant excepted, and prayed that this his bill of exceptions may be signed, sealed, and enrolled, which is done accordingly.

H. W. THOMAS. [SEAL.]

Second bill of exceptions.

NUTT
vs.
CORBETT.

Be it remembered that on the trial of this cause the following testimony was introduced, which will be found in the bill of exceptions already taken, and is hereby adopted and made a part of this:

Be it remembered, &c., (see first bill of exceptions,) and the jury having returned a verdict in favor of the plaintiff, the defendant moved to set aside the verdict and prayed a new trial; which motion the court overruled; whereupon the defendant excepted, and prayed that this his exception might be signed, sealed, and enrolled, which is done accordingly.

H. W. THOMAS. [SEAL.]

From the record. A true copy.

Teste: JEFFERSON TACEY, *Clerk.*

☞ The inaccuracies in the foregoing record are according to the MS.

56 VIRGINIA:

At a district court held for the fourth judicial district, at the court-house, in the town of Fredericksburg, on Wednesday, the 8th day of January, 1868.

V. P. CORBETT, PLAINTIFF,
against
WILLIAM D. NUTT, DEFENDANT.

Upon a writ of supersedeas to a judgment of the circuit court of Alexandria County, recovered on the 31st day of May, 1867, by the defendant against the plaintiff.

This day came the parties, by their counsel, and the court having maturely considered the transcript of the record of the judgment aforesaid, and the arguments of counsel, is of opinion that there is no error in the said judgment; therefore, it is considered that the same be affirmed, and that the plaintiff pay to the defendant his costs by him about his defense in this behalf expended, and also one dollar damages, which is ordered to be certified to the said circuit court.

A copy. Teste: RO. S. CHEW, *D. C.*

57 Supreme court of appeals of Virginia, Richmond.

CORBETT
vs.
NUTT.

To the hon. judges of the court of appeals of Virginia:

The petition of V. P. Corbett respectfully represents that he is ag-

grieved by a judgment of the district court of appeals for the fourth judicial district, rendered on the 8th day of January, 1868, upon a writ of supersedeas to a judgment of the circuit court for Alexandria County, wherein your petitioner was plaintiff, and William D. Nutt was defendant, affirming the judgment of the circuit court for Alexandria.

A transcript of the record of the judgment complained of is herewith presented, and for the errors assigned in the petition of the plaintiff in the district court, he respectfully prays that said judgment may be reversed.

V. P. CORBETT,
By his counsel, BRENT & WATTLES.

I am respectfully of opinion that there is error in the judgment complained of.

GEORGE WM. BRENT,
Attorney practising in the Court of Appeals.

58 VIRGINIA:

At a supreme court of appeals, held at the capitol, in the city of Richmond, on Friday, May 29th, 1868.

V. P. CORBETT, PL'T,
against
WILLIAM D. NUTT, TRUSTEE, DEF'T.

Upon a writ of supersedeas to a judgment rendered by the district court, held for the fourth judicial district, at the town of Fredericksburg, on the 8th day of January, 1868, affirming, with costs, &c., a judgment recovered by the defendant against the plaintiff in the circuit court of Alexandria County on the 31st day of May, 1867.

This day came the parties, by their counsel, and the court hav-
59 ing maturely considered the transcript of the record of the judgment aforesaid, and the arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is no error in the said judgment; therefore, it is considered that the defendant recover against the plaintiff thirty dollars damages, and also his costs by him, about his defence in this behalf expended. Which is ordered to be certified to the said district court, the clerk of which is ordered forthwith to certify the same to the clerk of the said circuit court.

Defendant's costs in the court of appeals, $23 52.

A copy. Teste: M. T. STARKE, *C. C.*

60 STATE OF VIRGINIA, *City of Richmond, to wit:*

I, M. T. Starke, clerk of the supreme court of appeals of the State of Virginia, in obedience to the mandate of a writ of error awarded by the Hon. Salmon P. Chase, Chief Justice of the United States, dated the 8th day of June, 1868, in the case of V. P. Corbett vs. Wm. D. Nutt, which is herewith returned, do hereby certify that the printed pages hereto annexed, numbered from one to forty-four, inclusive, and from one to two, inclusive, and the manuscript copy of the final judgment of said court, also hereto annexed, contain a true transcript of the record
61 in the case of V. P. Corbett, plaintiff in error, versus William D. Nutt, trustee, defendant in error, as the same remain on the files of said supreme court of appeals. I further return the citation and copy of the bond.

I further certify that the supreme court of appeals of Virginia is the

highest court of law in the State of Virginia in which a decision can be had, and that in this case there was drawn in question the construction of the following acts of Congress: The act of June the 7th, 1863, entitled "An act for the collection of direct taxes in the insurrectionary districts within the United States, and for other purposes;" the act of July the
17th, 1862, entitled "An act to suppress insurrection, to punish
62 treason and rebellion, to seise and confiscate the property of rebels, and for other purposes;" and the act of March 3d, 1865, entitled "An act for the collection of direct taxes in the insurrectionary districts within the United States, and for other purposes."

In testimony whereof I have hereunto subscribed my name as clerk of the said supreme court of appeals of Virginia, (there being no official seal of said court,) this 10th day of March, 1869.

M. T. STARKE,
Clerk of the Supreme Court of Appeals of Va.

(Indorsement on cover:) No. 224. V. P. Corbett, pl'ff in error, vs. William D. Nutt, trustee, &c. Virginia sup. c't of appeals.
Filed 17 April, 1869.

In the Supreme Court

OF THE

UNITED STATES.

V. P. CORBET, Plaintiff in Error.

vs.

WILLIAM D. NUTT, Defendant in Error.

Writ of Error to the Supreme Court of appeals of Virginia.

FACTS OF THE CASE.

This was an action of unlawful detainer by William D. Nutt, trustee, instituted in the Circuit Court for Alexandria county, Virginia, to recover a tract of land situate in that county. Louisa Hunter was the owner of said tract. She died in April, 1863, in the county of Albemarle, in the State of Virginia, leaving a last will and testament, dated the 6th of August, 1852, by which she devised the said tract of land to William D. Nutt, for the benefit of Emily Featherstonaugh and Marian Young, two married ladies. At the breaking out of the late civil war Louisa Hunter was a resident of the county of Alexandria, and William D. Nutt, held an office under the United States, which he resigned in February, 1861. After the county of Alexandria was occupied and held in firm possession by the forces of the United States, in the fall of 1861, Mrs. Hunter and William D. Nutt abandoned their homes in Alexandria county, and went within the lines of the Confeder-

ate army. William D. Nutt had held office under the Confederate Government, at the time of Mrs. Hunter's death.

The tract of land was duly sold for taxes on the 24th of February, 1864, by the United States for unpaid taxes, and the plaintiff in error became the purchaser thereof.

On the 17th of July, 1865, James T. Featherstonhaugh, and Emily, his wife; Clement Young and Marian, his wife, and others, filed a bill in the Supreme Court of the District of Columbia, against the said William D. Nutt, to remove said Nutt from his trusteeship, who appeared, and in his sworn answer, says "that he has declined to accept the trust repo. ed in him," and by a decree of said court J. D. McPherson was appointed in his stead, as trustee, on the 22d of July, 1865.

It then appears that on the 10th of February, 1866, the said J. D. McPherson, as trustee, appeared before the tax commissioners in Alexandria, Virginia, and obtained from them a redemption of the land, the said McPherson making oath to support the Constitution of the United States, and the said Emily Featherstonhaugh and Marian Young swearing that they had taken no part in the late rebellion in favor of the insurgents. Judgment was rendered in favor of the defendant in error.

POINTS OF LAW.

The redemption by J. D. McPherson was illegal. He was a stranger to the land, and had no right to interfere. The redemption was therefore an utter nullity. Nutt, the defendant in error, was also a stranger to the redemption, and can claim no advantage from it.

The act of Congress of the 7th of June, 1862, entitled "An act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes." (See Laws of Congress, 1861–'62, sec. 6. Brightly's Supp., sec. 56, p. 1342)—as amended by act of February 3, 1863, provides that when land has been sold by the commissioners, "the owner of said lots of ground, or any loyal person of the United States, having any valid lien on, or interest in the land, may, at any time within sixty days after said sale, appear before the said board of tax commissioners, in his or her own proper person, and, if a citizen, upon taking

an oath to support the Constitution of the United States, &c., * * may redeem said lots of land from said sale, &c., * * and provided further, that, if the owner of said lots of ground shall be a minor, a non-resident alien, a loyal citizen beyond seas, a person of unsound mind, or under a legal disability, the guardian, trustee, or other person having charge of the person or estate of such, may redeem the same at any time within two years after the sale thereof and in the manner above provided, and with like effect."

The section provides for two classes of persons, those who are *sui juris* and those who were under legal disability. By the express terms of the act the right of redemption is confined in the first class to the actual owner in his proper person. In the second class, to the trustee or person having charge of the estate.

McPherson had no interest in the land. The decree of the court of the District of Columbia, removing Nutt and substituting McPherson in his stead, could not deprive Nutt of his title and vest it in McPherson. It could not operate on lands in another jurisdiction. (1 Rob. New Prac. 336, 343; Story Con. 344, 545; Watkins vs. Holman, 16 Peters 25.

Blackwell on Tax Titles, as to who can redeem, ch. 27, p. 424, last edition, says, "if it turns out that he had no interest whatever to be protected by the redemption, his act of redemption can neither vest title in him, or divest that of the tax purchaser. It would seem, then, that the doctrine is, that any person claiming an interest in the land has a right, *prima facia*, to redeem. But if it turns out that he had no such ownership as to authorize the redemption, his act is a harmless one."

Even if McPherson could be regarded as an owner for the purposes of redemption, yet in redeeming all the requirements of the statute allowing the redemption must be complied with, else the redemption will be inoperative.

The act of June 7th, 1862 requires the owner redeeming, to take an oath to support the Constitution of the United States.

The act of March 3d, 1865, sec. 7, State at large, 502, declares "Provided however, "That no owner shall be entitled to redeem unless in addition to the oath prescibed by existing laws, he shall swear that he has not taken part with the insurgents in the present rebellion, or any way given them aid or comfort, and shall satisfy the Board of Commissioners that the said oath is true."

Thus at the time of the issuing to McPherson the certificate of re-

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an oath to support the Constitution of the United States, &c., * * may redeem said lots of land from said sale, &c., * * and provided further, that, if the owner of said lots of ground shall be a minor, a non-resident alien, a loyal citizen beyond seas, a person of unsound mind, or under a legal disability, the guardian, trustee, or other person having charge of the person or estate of such, may redeem the same at any time within two years after the sale thereof and in the manner above provided, and with like effect."

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Thus at the time of the issuing to McPherson the certificate of re-

demption the 10th Febuary 1866 two oaths were required of the person redeeming. One to support the Constitution ; the other that the person redeeming had taken no part in the late rebellion.

The certificate of redemption which is the basis of the claim of the defendant in error shows that these two oaths were not taken by McPherson. (See certificate p. 36. Record.)

He alone took the oath to support the constitution. The certificate further shows that Emily Featherstonaugh and Marian Young made oath that they had not taken part in the rebellion, but took no oath to support the constitution. The oath of these ladies cannot help McPherson and if as supposed by the Court below these ladies could redeem in their own person, the oath of McPherson cannot supply the defect in their oaths.

But suppose the redemption by McPherson was valid and effectual, it could only be so upon the idea that he was the trustee of these ladies. The redemption then clothed him with the right, and gave him a right of action against the tax purchaser, but gave no right of action whatsoever to the defendant in error, because he was a stranger to and had no interest in the redemption, he having renounced the trust vested in him under the will of Louisa Hunter; in consequence of which McPherson was appointed in his stead. (Record pp. 26, 27.)

But it is insisted that the answer of Nutt in the Court of the District of Columbia is only a parol renunciation or disclaimer of the trust and therefore insufficient to divest the title out of him. If, however, it be true that Nutt's disclaimer did not divest him of the title then it follows that he was the trustee at the time McPherson redeemed and had the legal charge of the estate, and was a person who could not take the oath required by the act of March 3 1865.

The disclaimer, however, was effectual. The law does not force any one to accept an estate, whether made in trust or otherwise; and it is therefore competent for a person appointed trustee to refuse both the estate and the office attached to it; that the disclaimer should be in writing is not essential and is only useful as being the most perfect and convenient evidence of the refusal. Hill on Trustees Ed. 1867, pp. 342, 343, 346.

It was once thought that a disclaimer should be a matter of record. It has however, been ruled otherwise. Townson vs. Tichell 3 Bar and Ald 31; for as Abbott, C J. observes there could not be a disclaimer

in a court of record by a trustee, "unless some other person had thought fit to cite him, there to receive his disclaimer; and if the estate were *damnosa hereditas* that would be likely to happen."

Justice Holryd in the same case laid it down that "even a deed might be dispensed with and a party might disclaim a freehold by parol."

In Burrit vs. Silliman, &c., 13 N. Y. 93, the Court say that the devisee in trust cannot be vested against his will with such an estate; and where he declines to accept it, his disclaimer need not be in such form as to pass an estate.

Bingham vs. Clammorris, 2 Molley, 253 Skipwith vs. Cunningham 8 Leigh, 271, also authorities in notes on page 347, Hill on Trustees

If the disclaimer of Nutt, the defendant, in error be effectual, it then follows that this action was improperly brought in his name. It also follows, that if McPherson was not the trustee and had no right to redeem, then upon Nutt's disclaimer the legal estate vested in the heirs of Mrs. Louisa Hunter, and they should have redeemed and maintained this action. Hill on Trustees, 349, Ed., 1867.

There is nothing inconsistent in the above views with those held by this Court in the case of Bennett vs. Hunter, 9 Wallace 326. On the contrary we think they sustain them.

On p. 338, Mr Chief Justice Chase says, "On the contrary, the fact that the privilege of redemption after sale is limited to *owner or loyal person having a lien* appearing in *proper person* and taking *a prescribed oath*, appears to us to afford an irresistible inference that the right of payment before sale is not so limited, * * * It is expressly distinguished from the privilege of redemption after sale and complete divestiture of title, which is accorded upon very different principles and in pursuance of a very different policy."

II.

Even if the redemption had been properly allowed and Nutt the defendant were trustee, yet he has no present right of action for a recovery of the premises in dispute.

The 7th section of the act March 3rd, 1865, Statutes-at-Large 502, provides "That in any case in which lands shall be redeemed after sale made by the board of Commissioners, and after the money received by them on the sale of such lands has been paid into the treasury, by the owner complying with all the provisions of the law relating to redemption necessary to be complied with on his part the said board shall certify to the Secretary of the Treasury, the fact that such lands have been redeemed the amount of the purshase money paid by the purchaser and

when the purchase money was paid, &c. * * and the Secretary, on being satisfied that the lands have been duly redeemed, shall repay by draft drawn the Treasury of the United States, the purchaser the principal and interest of said purchase money; *and the purchaser shall forthwith deliver possession to the owner so redeeming as aforesaid.*"

The object of this provision is twofold. First to protect the treasury, secondly for the benefit of purchaser. It invests the Secretary with a superintendency or revisory power over the tax commissioners. Before the owner is entitled to possession the Secretary must be satisfied that the lands have been duly redeemed, and on being so satisfied he re-pays the purchaser, and not until then is the owner entitled to the possession. The language of the act is too clear for criticism. On re-payment of the purchase money," the purchaser shall forthwith deliver possession to the owner so redeeming."

The policy of the provision is both sound and wise. It shields the Government against hasty and illegal redemptions, and secures to the purchaser the return of his money before he is obliged to surrender. Of this the owner cannot complain. His land had become forfeited to the Government, and his claim of redemption was a boon allowed by the act, and could only be exercised in the mode and manner prescribed. The owner's right of redemption is not destroyed by the non-payment of the purchase, but simply his possession is postponed until the redemption has been reviewed by the Secretary of the Treasury and the purchase money returned.

III.

The will of Mrs. Hunter was inoperative to pass any estate to the defendant Wm D. Nutt.

When the late civil war was flagrant Mrs. Hunter and Nutt were residents of Alexandria County, Nutt had been the holder of an office of trust under the U. S. They abandoned their homes in the fall of 1861 and Nutt accepted an office under the Confederate Government.

The devise is inoperative under the provisions of the Act of Congress of July 17 1862, entitled "an act to suppress insurrections, punish treason and rebellion, to seize and confiscate the property of rebels and for other purposes." Statutes-at-Large for 1861, 62. p. 589.

The 5th section of this act provides that "to insure the speedy termination of the present rebellion, it shall be the duty of the President of the United States to cause the seizure of all the estate and property &c.," * * of certain persons thereafter named.

The fourth clause of the section describes one class as folows: "Of any person who having held an office of honor trust or profit in the United States, shall hereafter hold an office in the so called Confederate States of America."

After thus enumerating the several classes of persons whose property is thus liable to seizure the section concludes, "all sales transfers or conveyances of any such property shall be null and void; and it shall be a sufficient bar to any suit brought by such person for the possession or use of such property, or any of it to allege and prove that he is one of the persons described in this section."

The 6th section of said act is as follows: "That if any person within any State or Territory of the United States, other than those named as aforesaid, after the passage of this act, being engaged in armed rebellion against the United States, or aiding or abetting such rebellion, shall not within sixty days after public warning and proclamation duly given and made by the President of the United States, cease to aid, countenance and abet such rebellion, and return to his allegiance to the United States, all the estate, and property, moneys, stocks and credits of such person shall be liable to seizure as aforesaid, and it shall be the duty of the President to seize and use them as aforesaid or the proceeds thereof.

And all sales, transfers or conveyances of any such property after the expiration of the said sixty days from the date such warning and proclamation shall be null and void; and it shall be a sufficient bar to any suit brought by such person for the possession or the use of such property or any of it, to allege and prove that he is one of the persons, described in this section."

The proclamation of the President was made on the 25th July 1862. Appendix to Statutes-at-Large p. IV.

The 7th section of the act directs what proceeding shall be had to secure the condemnation of such property.

The object and purpose of this act of Congress is obvious. The language of the act is to "insure the speedy termination of the rebellion."

It is manifest that the law could not be enforced under the 7th section in the States under the control of the Confederate authorities, and the law therefore would have been practically inoperative unless sections 5 and 6 should be regarded effective

The sections annul all conveyances and transfers by persons enumerated in the act. It is said, however, that no one except the United States can object. This is a mistake. The 5th and 6th sections provide that objection may be taken in any suit by the persons embraced or enumerated in the said sections. Sections 5 and 6 prevented Mrs. Hunter from conveying any estate and Nutt from accepting the same.

This point we think settled in McKee vs. United States 8 Wall 163.

It is urged, that no seizure was made, and property condemned under the 7th Section. This is true. But this does not prevent the operation of the 5th and 6th sections, which simply annul all transfers and conveyances,

It is said that before the title can be divested that condemnation should have been had under the 7th section.

It is true, as a general rule that in cases of forfeiture there must be condemnation or something equivalent thereto. But it is competent for the Sovereign power to dispense with this. No office found or other act is necessary. Smith vs. State Maryland, 6 Cranch, 286.

It is said, that alien devisee may take and hold until office found; Fairfax vs. Hunter 7, Cranch, 603. This is true; but only by consent of the sovereign power. But in this case Congress has by the 6th and 7th sections prohibited and annulled all such transfers.

That Congress had the power to confiscate no one can deny. It would therefore follow, that in order to enforce such power, that the right to arrest and annul all sales and transfers would exist.

The power to annul all such sales and transfers may be traced to another source, to the power to make war, to suppress insurrections, &c.

The property in controversy was always, from first to last, in the permanent occupation of the United States.

Now, the principles of war, making all the citizens of one of the belligerents enemies of the government, and all of the citizens of the other, applies equally to civil and international wars. Either belligerent may modify or limit its operation. Prize cases, 2 Black 666; Mrs. Alexander's case, 2 Wall. 404; The Venice, 2 Wall 258.

War gives the sovereign full right to take the persons and confiscate the property of the enemy wherever found; the mitigation of the rigid rule, which the policy of modern nations has introduced into practice, although it may affect its exercise, cannot impair the right itself, and when the sovereign authority shall choose to bring it into operation, the judicial authority must give effect to its will.

United States, vs. Brown and Cranch 110.

The language of the 6th section will embrace a devise. It is "all sales transfers and conveyances."

A devise is a conveyance.

Seaburn vs. Seaburn, 15 Gratt 423.

GEORGE WM. BRENT,

C. W. WATTLES,

For Plaintiffs in Error.

Supreme Court of the United States.

DECEMBER TERM, A. D. 1870.

V. B. CORBETT, PLAINTIFF IN ERROR,

VS.

WILLIAM D. NUTT, TRUSTEE, ETC.

———:-o-:———

Writ of Error to the Supreme Court of Appeals of Virginia.

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BRIEF FOR DEFENDANT IN ERROR.

CARLISLE & MCPHERSON,
for Defendant in Error.

POWELL, GINCK & CO., PRS., 632 F St.

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V. P. CORBETT, PLAINTIFF IN ERROR,
vs.
WM. D. NUTT, TRUSTEE, &c. } No.

———:-o-:———

BRIEF FOR DEFENDANT IN ERROR.

This cause comes up by writ of error to the Supreme Court of Appeals of the State of Virginia, under the 25th section of the Judiciary act.

THE CASE.

An action was brought in the circuit court of Alexandria county, Virginia, by Nutt, trustee, the defendant in error, to recover a parcel of land from Corbett, the plaintiff in error.

The plaintiff below made title from one Louisa Hunter, who died in Albemarle county, Virginia, in 1863, seized of the land in question, leaving a will, made in 1852 and republished in 1856 by which she devised the land to the plaintiff below in trust for Mrs. Young, her adopted daughter, and Mrs. Featherstonhaugh, her niece, both married women then and now. (Record, p. 15.)

The defendant claimed under a tax sale made under the act of Congress of June 7, 1862, at which he purchased the land in question, and relied on tax sale certificate No. 92. (Record, p. 11.)

The plaintiff claimed that the land had been redeemed from this sale, and relied on certificate of redemption No. 31. (Record, p. 36.)

Judgment was given for the plaintiff, and he appealed to the Supreme Court of Appeals of Virginia.

The petition to the Court of Appeals, (Record p. 4,) assigns five errors; or, as the last one of the five contains four distinct points, there were eight points in all made by the defendant before the Court of Appeals:

1. That secondary evidence was admitted to prove the will, without a sufficient foundation laid. (Record, pp. 22, 23.)

2. That the will was not proved as required by the act of Assembly of Virginia. (Record, pp. 22, 23.)

3. That the record of a copy of a copy of the will by the county court was inadmissible in evidence. (Record, p. 24.)

4. That the certificate of redemption was inadmissible in evidence, because the redemption was made by McPherson, who, the defendant alleged, was a stranger to the land and to this suit, and not authorized to redeem by the act of Congress. (Record, p. 37.)

5. That the court refused four instructions asked by the defendant below presenting, as he said, the following propositions:

1st. "That the devisor and devisee were both aiding or abetting the rebellion, and therefore the will was inoperative to pass any estate to the devisee." (Record, p. 9.)

2d. "That Nutt [the plaintiff] never accepted the trusts of the will. He had, therefore, no right to maintain this action." (Record, p. 9.)

3d. "That an unlawful detainer was not the appropriate remedy. The title alone was involved." (Record, p. 9.)

4th. "Even if the redemption had been properly allowed, and the plaintiff were the trustee, he has no right to recover the possession in the stage of the matter, under the act of Congress of March 3, 1865," [which, as defendant claimed, entitles the purchaser at tax sale to re-

tain possession until he shall have been repaid his purchase money by the Secretary of the Treasury, and that the burden of proving such payment was upon the plaintiff.] (Record, p. 9.)

The foregoing are the errors assigned in the Court of Appeals; they differ in some material respects from the points made and reserved in the trial of the cause in the Circuit Court.

Of these questions, the 1st, 2d and 3d objections to the admissability of evidence, and the 2d and 3d instructions asked as to the right of the plaintiff to sue and the form of the remedy, are questions purely of local law arising under statutes, &c., of the State, and having been decided by the highest State courts, will not be re-examined here. Corbett *vs.* Nutt, 18 Grattan, 624.

The questions of Federal cognizance are these only—the 4th objection to evidence and the 1st and 4th instructions.

POINTS.

I.

The 4th objection to evidence was this:

The defendant having offered in evidence the certificate of tax sale, (Record, p. 25,) the plaintiff offered the certificate of redemption, (Record, p. 37,) to which the defendant objected on the ground that the redemption was made by John D. McPherson, and as the defendant objected, "*was illegal and did not sustain the plaintiff's claim.*" (Record, p. 37.)

The redemption certificate states in terms, that "J. D. McPherson, trustee for Marian Young and Emily Featherstonhaugh, owners of said property, and married women at the time of said sale, and under the same disability at the present time, having taken an oath to support the Constitution of the United States, and Marian Young and Emily Featherstonhaugh, having sworn that they had

not taken part with the insurgents in the present or late rebellion, or in any way given them aid or comfort, and satisfied as that the said oath was true, and the said John D. McPherson having paid, &c., * * * has redeemed the said lot," &c. (Record, p. 37.)

The provision for redemption is in the act of June 7, 1862, sec. 7, in the following words:

"Provided, that the owners of said lots of ground, or any loyal person of the United States having any valid lien upon or interest in the same, may at any time within sixty days after said sale, appear before the said board of tax commissioners in his or her own proper person, and, if a citizen, upon taking an oath to support the Constitution of the United States and paying the amount or, &c.. may redeem the said lots of land from said sale, * * And provided further, that if the owner of said lots of ground shall be a minor or a non-resident alien, or loyal citizen beyond seas, a person of unsound mind or under a legal disability, the guardian, trustee, or other person having charge of the person or estate of such person may redeem the same at any time within two years after the sale thereof, and in the manner above provided and with like effect." 12 Statutes, 425-4.

And it is further provided by the act of March 3, 1865, sec. 7, that the owner shall prove loyalty to the satisfaction of the tax commissioners. 12 Stat., 502.

Thus the tax commissioners recite all the facts required by the said acts to render its redemption valid under its provisions, to wit, that the owners were under a legal disability, that they were loyal and that their trustees had redeemed the land after taking the prescribed oath.

The commissioners being the officers charged with the execution of this law, it is presumed that their acts are valid until the contrary be shown.

I Phillip's Ev., ~~450, and cases cited~~ Cothrell 296
Chapin *vs.* Cortenius, 15 Ills., 427.

The defendant offered no evidence to disprove any fact stated in the certificate, nor is any such evidence anywhere contained in the record. On the contrary, evidence put in for another purpose shows that Mrs. Young and Mrs. Featherstonhaugh, were the equitable owners of the land and that, McPherson, as trustee for them held, real and personal estate in the District of Columbia. The act of Congress does not say that the trustee entitled to redeem shall be the trustee of the whole estate of the owner, or trustee of the particular property sold. It is sufficient if he be trustee of any estate or any funds of the owner which he can justly apply to that purpose.

Dubois *vs.* Hepburn, 10 Pet., 1–22.

We would go further if the exigency of our case required it, and contend that any person in the capacity of next friend of a married woman might redeem her land under the act; a married woman might own real estate and yet have no trustees, it might be held adversely and no one have charge of it for her. It could not have been intended by Congress to cut off such an owner from all rights of redemption. There is nothing in the policy of the act which would warrant a discrimination against her and we think the provisions of the act would warrant any person who would furnish money for redemption, in considering himself in charge of her estate for that purpose.

But in this case the provisions of the law have been complied with in letter and spirit, for McPherson was the trustee of their estate appointed by decree of the Supreme Court of the District of Columbia, and the owners were proved to the satisfaction of the commissioners, to be loyal persons and under a legal disability.

Patterson vs Bronte 9 Watts 100
Gaults appeal 32 Penn 98

II.

The next question arises upon the refusal of the court below to grant the first instruction asked, which is in the following words:

1. "If the jury shall believe from the evidence that Wm. D. Nutt, the plaintiff, who sues as trustee, held a position under the Government of the United States, and resigned said office, went voluntary within the lines of the Confederate States and accepted office under the Confederate government and held said office at the time of the death of the testatrix, and that the said Louisa Hunter was a resident of the county of Alexandria, at the time of the breaking out of the civil war and after its breaking out, went voluntarily into the Confederate lines and resided therein up to the time of her death, and that the premises in the summons described were at all times in the military lines and under the jurisdiction of the United States, then that said devise to the plaintiff was inoperative to pass or transfer any title to him, and he cannot therefor recover in this action."

"The object of this instruction, says the defendant in his petition to the Court of Appeals, was to raise the question as to the effect and true meaning of the sixth section of the act of Congress passad the seventeeth day of July, 1862." And after citing said section with authorities in support of its constitutionality, he observes '*under the authorities above cited in the evidence we are warranted in concluding that the devisor and devissee were both aiding and abetting the rebellion, and that therefore the will was inoperative to pass any estate to the divisee.*'"

We submit that it is not the province of this court to draw conclusions from the evidence. And if the proposition can be supported only by finding a fact, it must fail. The question here is only as to the correctness of the instruction asked by the defendant.

The sixth section of the act referred to declares, that if any person, being engaged in armed rebellion, or in aiding such rebellion, shall not within sixty days after proclamation return to his allegiance, the estate of such person shall be subject to seizure, and it renders all transfers of any such property after said sixty days null and void.

If, then, the transfer of this property was void under this section, it must have been because Mrs. Hunter was aiding and abetting the rebellion, and did not return to her allegiance after proclamation; whether Nutt was aiding the rebellion, has nothing to do with the case; it was not his property that was transferred.

Now the case made in the instruction does not bring the case of Mrs. Hunter within the act. It intructs the jury that if they should find that Mrs. Hunter went voluntarily in the Confederate lines and was there when she died, then she could not transfer her property by her will; in other words it asks the court to say that merely going into the Confederate lines and remaining there is equivalent in law to aiding and abetting the rebellion and not returning to allegiance after proclamation.

We submit that this proposition is utterly untenable.

There may have been cogent and sufficient reasons, entirely consistent with Mrs. Hunter's innocence, which rendered it proper and necessary for her to change her residence from one part of Virginia to another, although the latter was within the Confederate lines. We know as a historical fact, that our Government almost daily allowed women and children to pass the lines and take up their residence in the insurgent States without any other reason than that their natural protectors lived or their means of subsistence lay in such States.

Moreover, the prohibition of transfers applies only in respect of land in the predicament described by the statute,

and not in respect of any general incapacity of the person. It is because the particular land is in that predicament and to prevent the evasion of the law, that all sales and transfers of that land are declared void, so that it may be held subject to the operation of the statute. The question then is, what is the predicament in which that land must be found in order to avoid such sales and transfers. This question is, we think, answered by the reasoning of this court in the case of Bigelow *vs.* Forrest, 9 Wallace, 339. It is land which the President has caused to be seized under the act with a view to its confiscation, as to such land and such only, all transfers are void.

Again, the prayer for the instruction does not say, nor does it otherwise appear that any evidence was offered to show that Mrs. Hunter *voluntarily* went in the Confederate lines. Evidence was offered to show that "she left her home and went to Middleburg, Va., within the Confederate lines," and that is all. Record, p. 23. Whether she went voluntarily or involuntarily, whether with the permission of the Government or otherwise, no evidence was offered to show.

III.

The fourth instruction asked and refused, is as follows:

"That to enable the plaintiff to recover in this action, he must show that the certificate of redemption was forwarded to the Secretary of the Treasury, and the defendant repaid his purchase money by draft drawn on the Treasury of the United States." (Rec. 37.)

This prayer is stated in the petition to the court of appeals, to be based upon the 7th section of the act of March 3, 1865, chap 87, (13 stat., 502), which provides in substance, that after land shall have been redeemed "by the owner complying with all the provisions of the law relating to redemption, necessary to be complied with on

his part, the board shall certify to the Secretary of the Treasury the fact that such lands have been redeemed."

No provision is made in this act that "*the certificate of redemption*" shall be forwarded to the Secretary of the Treasury. The "certificate of redemption" is a paper described in the 13th section of this same act, and is to be delivered to the person redeeming, upon payment of a fee of $2; and in the redemption certificate in this cause the receipt of the fee is acknowledged (Record, page 37.) The certificate of redemption, therefore became a muniment of title, which the owner was entitled to recover and to retain in his own possession. Neither the act in question nor any other act imposes any further duty on the owner. The act cited imposes certain duties on the tax commissioners and the Secretary of the Treasury, with which the owner has no concern. In fact, those duties, in the express terms of the act, do not commence until the owner has *complied with all the provisions necessary on his part to be complied with on his part.*

If the defendant intended to assert the proposition that the plaintiff could not recover without first proving that the tax commissioners and the Secretary had performed their respective duties in the premises; he failed to put his prayer in that form, but if he had done so, the instruction would have been properly refused. The purpose of the provision quoted from the act of 1865 was to enable purchasers at tax sales to recover their money when the land was redeemed. It seems no provision had been made before for reimbursing them. The act of 1862 authorized the owners to redeem, and left the purchasers without any means of recovering what they had paid. To supply this defect the act of 1865 was passed. It takes up the transaction where the act of 1862 leaves it, *after the owner shall have complied with all the provisions* NECESSARY ON HIS PART, &c., and proceeds to provide for repayment to the purchasers. This is

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a matter with which the owner has no concern, and in which he cannot interpose. The rule of law is that the Government does not seek its creditors; they must apply at the Treasury for their dues. To postpone the recovery of the owner until the tax commissioners should report and the purchaser should apply for reimbursement at the Treasury or until the Secretary should draw his draft, would be to place the right of the owner absolutely at the mercy of either of these parties.

Such a provision would be inconsistent with the right of redemption; by a redemption the sale is absolutely annulled. A tax sale makes a conditional title only. Redemption divests the estate of the purchaser.

Blackwell on Tax Titles, chap. 27, p. 290.
Dubois *vs.* Hepburn, 10 Pet. 22.
Corbett *vs.* Nutt, 18 ~~Graham~~, 624.

Grattans

CONCLUSION.

We submit that the judgment should be affirmed.

J. M. CARLISE,
J. D. McPHERSON,
for Defendant in Error.

